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THE
WORKS
OF
THE REV. SYDNEY SMITH.

IN THREE VOLUMES.

VOL. II:

LONDON:
PRINTED FOR
LONGMAN, ORME, BROWN, GREEN, AND LONGMANS,
PATERNOSTER-ROW.
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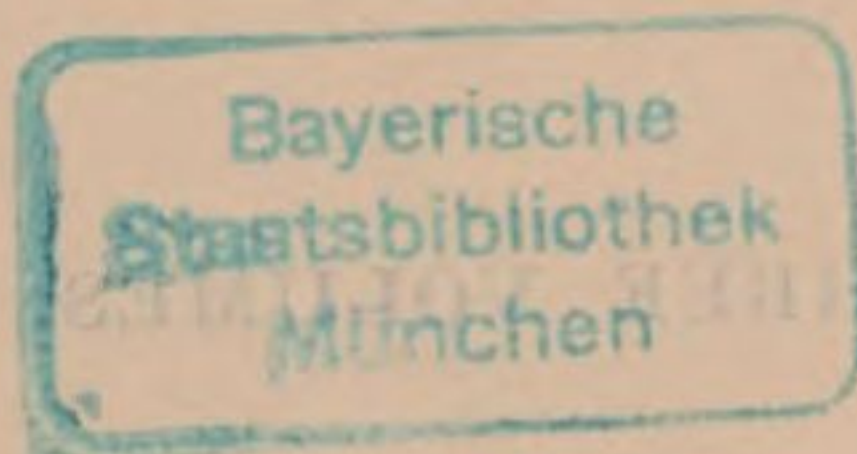
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New-Street-Square.

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THE SECOND VOLUME.

ARTICLES ORIGINALLY PUBLISHED IN THE "EDINBURGH
REVIEW."

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ARTICLES

ORIGINALLY PUBLISHED IN

THE EDINBURGH REVIEW.

AMERICA. (E. REVIEW, 1820.)

Statistical Annals of the United States of America. By
Adam Seybert. 4to. Philadelphia, 1818.

THIS is a book of character and authority; but it is a very large book; and therefore we think we shall do an acceptable service to our readers, by presenting them with a short epitome of its contents, observing the same order which has been chosen by the author. The whole, we conceive, will form a pretty complete picture of America, and teach us how to appreciate that country, either as a powerful enemy or a profitable friend. The first subject with which Mr. Seybert begins, is the Population of the United States.

Population.—As representatives and direct taxes are apportioned among the different States in proportion to their numbers, it is provided for in the American Constitution, that there shall be an actual enumeration of the people every ten years. It is the duty of the marshals in each State to number the

inhabitants of their respective districts : and a correct copy of the lists, containing the names of the persons returned, must be set up in a public place within each district, before they are transmitted to the Secretary of State :—they are then laid before Congress by the President. Under this act three census, or enumerations of the people, have been already laid before Congress—for the years 1790, 1800, and 1810. In the year 1790, the population of America was 3,921,326 persons, of whom 697,697 were slaves. In 1800, the numbers were 5,319,762, of which 896,849 were slaves. In 1810, the numbers were 7,239,903, of whom 1,191,364 were slaves ; so that at the rate at which free population has proceeded between 1790 and 1810, it doubles itself, in the United States, in a very little more than 22 years. The slave population, according to its rate of proceeding in the same time, would be doubled in about 26 years. The increase of the slave population in this statement is owing to the importation of negroes between 1800 and 1808, especially in 1806 and 1807, from the expected prohibition against importation. The number of slaves was also increased by the acquisitions of territory in Louisiana, where they constituted nearly half the population. From 1801 to 1811, the inhabitants of Great Britain acquired an augmentation of 14 per cent. ; the Americans, within the same period, were augmented 36 per cent.

Emigration seems to be of very little importance to the United States. In the year 1817, by far the most considerable year of emigration, there arrived in ten of the principal ports of America, from the Old World, 22,000 persons as passengers. The number of emigrants, from 1790 to 1810, is not supposed to have exceeded 6000 per annum. None of the

separate States have been retrograde during these three enumerations, though some have been nearly stationary. The most remarkable increase is that of New York, which has risen from 340,120 in the year 1790, to 959,049 in the year 1810. The emigration from the Eastern to the Western States is calculated at 60,000 persons per annum. In all the American enumerations, the males uniformly predominate in the proportion of about 100 to 92. We are better off in Great Britain and Ireland,—where the women were to the men, by the census of 1811, as 110 to 100. The density of population in the United States is less than 4 persons to a square mile; that of Holland, in 1803, was 275 to the square mile; that of England and Wales, 169. So that the fifteen provinces which formed the Union in 1810, would contain, if they were as thickly peopled as Holland, 135 millions souls.

The next head is that of *Trade and Commerce*.—In 1790, the Exports of the United States were above 19 millions dollars; in 1791, above 20 millions; in 1792, 26 millions; in 1793, 33 millions of dollars. Prior to 1795, there was no discrimination, in the American Treasury accounts, between the exportation of domestic, and the re-exportation of foreign articles. In 1795, the aggregate value of the merchandise exported, was 67 millions dollars, of which the foreign produce re-exported was 26 millions. In 1800, the total value of exports was 94 millions; in 1805, 101 millions; and in 1808, when they arrived at their maximum, 108 millions dollars. In the year 1809, from the effects of the French and English Orders in Council, the exports fell to 52 millions of dollars; in 1810, to 66 millions; in 1811, to 61 millions. In the first year of the war with England, to

38 millions ; in the second to 27 ; in the year 1814, when peace was made, to 6 millions. So that the exports of the republic, in six years, had tumbled down from 108 to 6 millions of dollars : after the peace, in the years 1815-16-17, the exports rose to 52, 81, 87 millions dollars.

In 1817, the exportation of cotton was 85 millions pounds. In 1815, the sugar made on the banks of the Mississippi was 10 millions pounds. In 1792, when the wheat trade was at the maximum, a million and a half of bushels were exported. The proportions of the exports to Great Britain, Spain, France, Holland, and Portugal, on an average of 10 years ending 1812, are as 27, 16, 13, 12, and 7 ; the actual value of exports to the dominions of Great Britain, in the three years ending 1804, were consecutively, in millions of dollars, 16, 17, 13.

Imports.—In 1791, the imports of the United States were 19 millions ; on an average of three consecutive years, ending 1804 inclusive, they were 68 millions ; in 1806-7, they were 138 millions ; and in 1815, 133 millions of dollars. The annual value of the imports, on an average of three years ending 1804, was 75,000,000, of which the dominions of Great Britain furnished nearly one half. On an average of three years ending in 1804, America imported from Great Britain to the amount of about 36 millions, and returned goods to the amount of about 23 millions. Certainly these are countries that have some better employment for their time and energy than cutting each other's throats, and may meet for more profitable purposes.—The American imports from the dominions of Great Britain, before the great American war, amounted to about 3 millions sterling ; soon after the war, to the same. From 1805 to 1811,

both inclusive, the average annual exportation of Great Britain to all parts of the world, in real value, was about 43 millions sterling, of which one fifth, or near 9 millions, was sent to America.

Tonnage and Navigation.— Before the revolutionary war, the American tonnage, whether owned by British or American subjects, was about 127,000 tons ; immediately after that war, 108,000. In 1789, it had amounted to 437,733 tons, of which 279,000 was American property. In 1790, the total was 605,825, of which 354,000 was American. In 1816, the tonnage, all American, was 1,300,000. On an average of three years, from 1810 to 1812, both inclusive, the registered tonnage of the British empire was 2,459,000 ; or little more than double the American.

Lands.— All public lands are surveyed before they are offered for sale ; and divided into townships of six miles square, which are subdivided into thirty-six sections of one mile square, containing each 640 acres. The following lands are excepted from the sales. — One thirty-sixth part of the lands, or a section of 640 acres in each township, is uniformly reserved for the support of schools ; seven entire townships, containing each 23,000 acres, have been reserved in perpetuity for the support of learning ; all salt springs and lead mines are also reserved. The Mississippi, the Ohio, and all the navigable rivers and waters leading into either, or into the river St. Lawrence, remain common highways, and for ever free to all the citizens of the United States, without payment of any tax. All the other public lands, not thus excepted, are offered for public sale in quarter sections of 160 acres, at a price not less than two dollars per acre, and as much more as they will fetch

by public auction. It was formerly the duty of the Secretary of the Treasury to superintend the sale of lands. In 1812, an office, denominated the General Land-Office, was instituted. The public lands sold prior to the opening of the land-offices, amounted to one million and a half of acres. The aggregate of the sales since the opening of the land-offices, N.W. of the river Ohio, to the end of September 1817, amounted to 8,469,644 acres; and the purchase-money to 18,000,000 dollars. The lands sold since the opening of the land-offices in the Mississippi territory, amount to 1,600,000 acres. The stock of unsold land on hand is calculated at 400,000,000 acres. In the year 1817 there were sold above two millions acres.

Post-office. — In 1789, the number of post-offices in the United States was seventy-five; the amount of postage 38,000 dollars; the miles of post-road 1800. In 1817, the number of post-offices was 3,459; the amount of postage 961,000 dollars; and the extent of post-roads 51,600 miles.

Revenue. — The revenues of the United States are derived from the customs; from duties on distilled spirits, carriages, snuff, refined sugar, auctions, stamped paper, goods, wares, and merchandise manufactured within the United States, household furniture, gold and silver watches, and postage of letters; from monies arising from the sale of public lands, and from fees on letters-patent. The following are the duties paid at the custom-house for some of the principal articles of importation: — $7\frac{1}{2}$ per cent. on dyeing drugs, jewellery, and watch-work; 15 per cent. on hempen cloth, and on all articles manufactured from iron, tin, brass, and lead — on buttons, buckles, china, earthenware, and glass, except window glass; 25 per

cent. on cotton and woollen goods, and cotton twist ; 30 per cent. on carriages, leather, and leather manufactures, &c.

The average annual produce of the customs, between 1801 and 1810, both inclusive, was about twelve millions dollars. In the year 1814, the customs amounted *only to four millions* ; and, in the year 1815, the first year after the war, rose to thirty-seven millions. From 1789 to 1814, the customs have constituted 65 per cent. of the American revenues ; loans 26 per cent. ; and all other branches 8 to 9 per cent. They collect their customs at about 4 per cent. ; — the English expense of collection is 6*l.* 2*s.* 6*d.* per cent.

The duty upon spirits is extremely trifling to the consumer — not a penny per gallon. The number of distilleries is about 15,000. The licences produce a very inconsiderable sum. The tax laid upon carriages in 1814, varied from fifty dollars to one dollar, according to the value of the machine. In the year 1801, there were more than fifteen thousand carriages of different descriptions paying duty. The furniture-tax seems to have been a very singular species of tax, laid on during the last war. It was an *ad valorem* duty upon all the furniture in any man's possession, the value of which exceeded 600 dollars. Furniture cannot be estimated without domiciliary visits, nor domiciliary visits allowed without tyranny and vexation. An information laid against a new arm chair, or a clandestine sideboard — a search-warrant, and a conviction consequent upon it — have much more the appearance of English than American liberty. The licence for a watch, too, is purely English. A truly free Englishman walks out covered with licences. It is impossible to convict

him. He has paid a guinea for his powdered head — a guinea for the coat of arms upon his seals — a three guinea licence for the gun he carries upon his shoulder to shoot game ; and is so fortified with permits and official sanctions, that the most eagle-eyed informer cannot obtain the most trifling advantage over him.

America has borrowed, between 1791 and 1815, one hundred and seven millions of dollars, of which forty-nine millions were borrowed in 1813 and 1814. The internal revenue in the year 1815 amounted to eight millions dollars ; the gross revenue of the same year, including the loan, to fifty-one millions dollars.

Army. — During the late war with Great Britain, Congress authorised the raising of 62,000 men for the armies of the United States, — though the actual number raised never amounted to half that force. In February, 1815, the army of the United States did not amount to more than 32,000 men ; in January, 1814, to 23,000.* The recruiting service, as may be easily conceived, where the wages of labour are so high, goes on very slowly in America. The military peace establishment was fixed in 1815 at 10,000 men. The Americans are fortunately exempt from the insanity of garrisoning little rocks and islands all over the world ; nor would they lavish millions upon the ignoble end of the Spanish Peninsula—the most useless and extravagant possession with which any European power was ever afflicted. In 1812, any recruit honourably discharged from the service was allowed three months' pay, and 160 acres of land. In 1814, every non-commissioned officer,

* Peace with Great Britain was signed in December, 1814, at Ghent.

musician, and private, who enlisted and was afterwards honourably discharged, was allowed, upon such discharge, 320 acres. The enlistment was for five years, or during the war. The widow, child, or parent of any person enlisted, who was killed or died in the service of the United States, was entitled to receive the same bounty in land.

Every free white male between eighteen and forty-five, is liable to be called out in the militia, which is stated, in official papers, to amount to 748,000 persons.

Navy. — On the 8th of June, 1785, the Americans had only one vessel of war, the *Alliance*; and that was thought to be too expensive, it was sold! The attacks of the Barbary powers first roused them to form a navy; which, in 1797, amounted to three frigates. In 1814, besides a great increase of frigates, four seventy-fours were ordered to be built. In 1816, in consequence of some brilliant actions of their frigates, the naval service had become very popular throughout the United States. One million of dollars were appropriated annually, for eight years, to the gradual increase of the navy; nine seventy-fours*, and twelve forty-four gun ships were ordered to be built. Vacant and unappropriated lands belonging to the United States, fit to produce oak and cedar, were to be selected for the use of the navy. The peace establishment of the marine corps was increased, and six navy yards were established. We were surprised to find Dr. Seybert complaining of a want of ship timber in America. ‘Many persons (he says) believe that our stock of live oak is very

* The American seventy-four gun ships are as big as our first-rates, and their frigates nearly as big as ships of the line.

considerable ; but upon good authority we have been told, in 1801, that supplies of live oak from Georgia will be obtained with great difficulty, and that the larger pieces are very scarce.' In treating of naval affairs, Dr. Seybert, with a very different purpose in view, pays the following involuntary tribute to the activity and effect of our late naval warfare against the Americans.

' For a long time the majority of the people of the United States was opposed to an extensive and permanent Naval establishment ; and the force authorised by the Legislature, until very lately, was intended for temporary purposes. A Navy was considered to be beyond the financial means of our country ; and it was supposed the people would not submit to be taxed for its support. Our brilliant success in the late war has changed the public sentiment on this subject : many persons who formerly opposed the Navy, now consider it as an essential means for our defence. The late transactions on the borders of the Chesapeak Bay, cannot be forgotten ; the extent of that immense estuary enabled the enemy to sail triumphant into the interior of the United States. For hundreds of miles along the shores of that great Bay, our people were insulted ; our towns were ravaged and destroyed ; a considerable population was teased and irritated ; depredations were hourly committed by an enemy who could penetrate into the bosom of the country, without our being able to molest him whilst he kept on the water. By the time a sufficient force was collected, to check his operations in one situation, his ships had already transported him to another, which was feeble, and offered a booty to him. An army could make no resistance to this mode of warfare ; the people were annoyed ; and they suffered in the field only to be satisfied of their inability to check those who had the dominion upon our waters. The inhabitants who were in the immediate vicinity, were not alone affected by the enemy ; his operations extended their influence to our great towns on the Atlantic coast ; domestic intercourse and internal commerce were interrupted, whilst that with foreign nations was,

in some instances, entirely suspended. The Treasury documents for 1814 exhibit the phenomenon of the State of Pennsylvania not being returned in the list of the exporting States. We were not only deprived of revenue, but our expenditures were very much augmented. It is probable the amount of the expenditures incurred on the borders of the Chesapeake, would have been adequate to provide naval means for the defence of those waters: the people might then have remained at home, secure from depredation in the pursuit of their tranquil occupations. The expenses of the Government, as well as of individuals, were very much augmented for every species of transportation. Every thing had to be conveyed by land carriage. Our communication with the ocean was cut off. One thousand dollars were paid for the transportation of each of the thirty-two pounder cannon from Washington city to Lake Ontario, for the public service. Our roads became almost impassable from the heavy loads which were carried over them. These facts should induce us, in times of tranquillity, to provide for the national defence, and execute such internal improvements as cannot be effected during the agitations of war.' — (p. 679.)

Expenditure. — The President of the United States receives about 6000*l.* a year; the Vice-President about 600*l.*; the deputies to Congress have 8 dollars per day, and 8 dollars for every 20 miles of journey. The First Clerk of the House of Representatives receives about 750*l.* per annum; the Secretary of State, 1200*l.*; the Postmaster-General, 750*l.*; the Chief Justice of the United States, 1000*l.*; a Minister Plenipotentiary, 2200*l.* per annum. There are, doubtless, reasons why there should be two noblemen appointed in this country as Postmasters General, with enormous salaries, neither of whom know a twopenny post letter from a general one, and where further retrenchments are stated to be impossible. This is clearly a case to which that impossibility extends. But these are matters where a prostration

of understanding is called for ; and good subjects are not to reason, but to pay. If, however, we were ever to indulge in the Saxon practice of looking into our own affairs, some important documents might be derived from these American salaries. Jonathan, for instance, sees no reason why the first clerk of his House of Commons should derive emoluments from his situation to the amount of 6000*l.* or 7000*l.* per annum ; but Jonathan is vulgar, and arithmetical. The total expenditure of the United States varied, between 1799 and 1811 both inclusive, from 11 to 17 millions dollars. From 1812 to 1814, both inclusive, and all these years of war with this country, the expenditure was consecutively 22, 29, and 38 millions dollars. The total expenditure of the United States, for 14 years from 1791 to 1814, was 333 millions dollars ; of which, in the three last years of war with this country, from 1812 to 1814, there were expended 100 millions of dollars, of which only 35 were supplied by revenue, the rest by loans and government paper. The sum total received by the American Treasury from the 3d of March 1789 to the 31st of March 1816, is 354 millions dollars ; of which 107 millions have been raised by loan, and 222 millions by the customs and tonnage : so that, exclusive of the revenue derived from loans, 222 parts out of 247 of the American revenue have been derived from foreign commerce. In the mind of any sensible American, this consideration ought to prevail over the few splendid actions of their half dozen frigates, which must, in a continued war, have been, with all their bravery and activity, swept from the face of the ocean by the superior force and equal bravery of the English. It would be the height of madness in America to run into another naval war

with this country, if it could be averted by any other means than a sacrifice of proper dignity and character. They have, comparatively, no land revenue; and, in spite of the *Franklin* and *Guerrière*, though lined with cedar and mounted with brass cannon, they must soon be reduced to the same state which has been described by Dr. Seybert, and from which they were so opportunely extricated by the treaty of Ghent. David Porter and Stephen Decatur are very brave men; but they will prove an unspeakable misfortune to their country, if they inflame Jonathan into a love of naval glory, and inspire him with any other love of war than that which is founded upon a determination not to submit to serious insult and injury.

We can inform Jonathan what are the inevitable consequences of being too fond of glory; — TAXES upon every article which enters into the mouth, or covers the back, or is placed under the foot — taxes upon every thing which it is pleasant to see, hear, feel, smell, or taste — taxes upon warmth, light, and locomotion — taxes on every thing on earth, and the waters under the earth — on every thing that comes from abroad, or is grown at home — taxes on the raw material — taxes on every fresh value that is added to it by the industry of man — taxes on the sauce which pampers man's appetite, and the drug that restores him to health — on the ermine which decorates the judge, and the rope which hangs the criminal — on the poor man's salt, and the rich man's spice — on the brass nails of the coffin, and the ribands of the bride — at bed or board, couchant or levant, we must pay. — The schoolboy whips his taxed top — the beardless youth manages his taxed horse, with a taxed bridle on a taxed road: — and the dying En-

glishman, pouring his medicine, which has paid 7 per cent., into a spoon that has paid 15 per cent., — flings himself back upon his chintz bed, which has paid 22 per cent. — and expires in the arms of an apothecary who has paid a licence of a hundred pounds for the privilege of putting him to death. His whole property is then immediately taxed from 2 to 10 per cent. Besides the probate, large fees are demanded for burying him in the chancel; his virtues are handed down to posterity on taxed marble; and he is then gathered to his fathers, — to be taxed no more. In addition to all this, the habit of dealing with large sums will make the Government avaricious and profuse; and the system itself will infallibly generate the base vermin of spies and informers, and a still more pestilent race of political tools and retainers of the meanest and most odious description; — while the prodigious patronage which the collecting of this splendid revenue will throw into the hands of Government, will invest it with so vast an influence, and hold out such means and temptations to corruption, as all the virtue and public spirit, even of republicans, will be unable to resist.

Every wise Jonathan should remember this, when he sees the rabble huzzaing at the heels of the truly respectable Decatur, or inflaming the vanity of that still more popular leader, whose justification has lowered the character of his Government with all the civilised nations of the world.

Debt. — America owed 42 millions dollars after the revolutionary war; in 1790, 79 millions; in 1803, 70 millions; and in the beginning of January 1812, the public debt was diminished to 45 millions dollars. After the last war with England, it had risen to 123

millions ; and so it stood on the 1st of January 1816. The total amount carried to the credit of the commissioners of the sinking fund, on the 31st December 1816, was about 34 millions of dollars.

Such is the land of Jonathan—and thus has it been governed. In his honest endeavours to better his situation, and in his manly purpose of resisting injury and insult, we most cordially sympathise. We hope he will always continue to watch and suspect his Government as he now does—remembering, that it is the constant tendency of those entrusted with power, to conceive that they enjoy it by their own merits, and for their own use, and not by delegation, and for the benefit of others. Thus far we are the friends and admirers of Jonathan. But he must not grow vain and ambitious ; or allow himself to be dazzled by that galaxy of epithets by which his orators and newspaper scribblers endeavour to persuade their supporters that they are the greatest, the most refined, the most enlightened, and the most moral people upon earth. The effect of this is unspeakably ludicrous on this side of the Atlantic—and, even on the other, we shall imagine, must be rather humiliating to the reasonable part of the population. The Americans are a brave, industrious, and acute people ; but they have hitherto given no indications of genius, and made no approaches to the heroic, either in their morality or character. They are but a recent offset indeed from England ; and should make it their chief boast, for many generations to come, that they are sprung from the same race with Bacon and Shakspeare and Newton. Considering their numbers, indeed, and the favourable circumstances in which they have been placed, they have yet done marvellously little to assert the honour

of such a descent, or to show that their English blood has been exalted or refined by their republican training and institutions. Their Franklins and Washingtons, and all the other sages and heroes of their revolution, were born and bred subjects of the King of England,—and not among the freest or most valued of his subjects. And, since the period of their separation, a far greater proportion of their statesmen and artists and political writers have been foreigners, than ever occurred before in the history of any civilised and educated people. During the thirty or forty years of their independence, they have done absolutely nothing for the Sciences, for the Arts, for Literature, or even for the statesman-like studies of Politics or Political Economy. Confining ourselves to our own country, and to the period that has elapsed since *they* had an independent existence, we would ask, Where are their Foxes, their Burkes, their Sheridans, their Windhams, their Horners, their Wilberforces? — where their Arkwrights, their Watts, their Davys? — their Robertsons, Blairs, Smiths, Stewarts, Paleys, and Malthuses? — their Porsons, Parrs, Burneys, or Blomfields? — their Scotts, Rogers's, Campbells, Byrons, Moores, or Crabbes? — their Siddons's, Kembles, Keans, or O'Neils? — their Wilkies, Laurences, Chantry's? — or their parallels to the hundred other names that have spread themselves over the world from our little island in the course of the last thirty years, and blest or delighted mankind by their works, inventions, or examples? In so far as we know, there is no such parallel to be produced from the whole annals of this self-adulating race. In the four quarters of the globe, who reads an American book? or goes to an American play? or looks at an American picture

or statue? What does the world yet owe to American physicians or surgeons? What new substances have their chemists discovered? or what old ones have they analysed? What new constellations have been discovered by the telescopes of Americans? What have they done in the mathematics? Who drinks out of American glasses? or eats from American plates? or wears American coats or gowns? or sleeps in American blankets? Finally, under which of the old tyrannical governments of Europe is every sixth man a slave, whom his fellow-creatures may buy and sell and torture?

When these questions are fairly and favourably answered, their laudatory epithets may be allowed: but, till that can be done, we would seriously advise them to keep clear of superlatives.

IRELAND. (E. REVIEW, 1820.)

1. *Whitelaw's History of the City of Dublin.* 4to. Cadell and Davies.
2. *Observations on the State of Ireland, principally directed to its Agriculture and Rural Population; in a Series of Letters, written on a Tour through that Country.* In 2 Vols. By J. C. Curwen, Esq. M.P. London, 1818.
3. *Gamble's Views of Society in Ireland.*

THESE are all the late publications that treat of Irish interests in general, — and none of them are of first-rate importance. Mr. Gamble's Travels in Ireland are of a very ordinary description — low scenes and low humour making up the principal part of the narrative. There are readers, however, whom it will amuse; and the reading market becomes more and more extensive, and embraces a greater variety of persons every day. Mr. Whitelaw's History of Dublin is a book of great accuracy and research, highly creditable to the industry, good sense, and benevolence of its author. Of the Travels of Mr. Christian Curwen, we hardly know what to say. He is bold and honest in his politics — a great enemy to abuses — vapid in his levity and pleasantry, and infinitely too much inclined to declaim upon commonplace topics of morality and benevolence. But with these drawbacks, the book is not ill written; and may be advantageously read by those who are desirous of information upon the present State of Ireland.

So great, and so long has been the misgovernment of that country, that we verily believe the empire would be much stronger, if every thing was open

sea between England and the Atlantic, and if *skates and codfish* swam over the fair land of Ulster. Such jobbing, such profligacy—so much direct tyranny and oppression—such an abuse of God's gifts—such a profanation of God's name for the purposes of bigotry and party spirit, cannot be exceeded in the history of civilised Europe, and will long remain a monument of infamy and shame to England. But it will be more useful to suppress the indignation which the very name of Ireland inspires, and to consider impartially those causes which have marred this fair portion of the creation, and kept it wild and savage in the midst of improving Europe.

The great misfortune of Ireland is, that the mass of the people have been given up for a century to a handful of Protestants, by whom they have been treated as *Helots*, and subjected to every species of persecution and disgrace. The sufferings of the Catholics have been so loudly chanted in the very streets, that it is almost needless to remind our readers, that during the reigns of George I. and George II. the Irish Roman Catholics were disabled from holding any civil or military office, from voting at elections, from admission into corporations, from practising law or physic. A younger brother, by turning Protestant, might deprive his elder brother of his birth-right: by the same process, he might force his father, under the name of a liberal provision, to yield up to him a part of his landed property; and if an eldest son, he might, in the same way, reduce his father's fee-simple to a life estate. A Papist was disabled from purchasing freehold lands—and even from holding long leases—and any person might take his Catholic neighbour's house by paying 5*l.* for it. If the child of a Catholic father turn Protestant, he was taken

away from his father and put into the hands of a Protestant relation. No Papist could purchase a freehold, or lease, for more than thirty years—or inherit from an intestate Protestant—nor from an intestate Catholic—nor dwell in Limerick or Galway—nor hold an advowson, nor buy an annuity for life. 50*l.* was given for discovering a popish Archbishop—30*l.* for a popish Clergyman—and 10*s.* for a Schoolmaster. No one was allowed to be trustee for Catholics; no Catholic was allowed to take more than two apprentices; no Papist to be solicitor, sheriff, or to serve on grand juries. Horses of Papists might be seized for the militia; for which militia Papists were to pay double, and to find Protestant substitutes. Papists were prohibited from being present at vestries, or from being high or petty constables; and, when resident in towns, they were compelled to find Protestant watchmen. Barristers and solicitors marrying Catholics, were exposed to the penalties of Catholics. Persons plundered by privateers during a war with any Popish prince, were reimbursed by a levy on the Catholic inhabitants where they lived. All Popish priests celebrating marriages contrary to 12 Geo. I. cap. 3., were to be hanged.

The greater part of these incapacities are removed, though many of a very serious and oppressive nature still remain. But the grand misfortune is, that the spirit which these oppressive Laws engendered remains. The Protestant still looks upon the Catholic as a degraded being. The Catholic does not yet consider himself upon an equality with his former tyrant and taskmaster. That religious hatred which required all the prohibiting vigilance of the law for its restraint, has found in the law its strongest support; and the spirit which the law first exasperated

and embittered, continues to act long after the original *stimulus* is withdrawn. The law which prevented Catholics from serving on Grand Juries is repealed ; but Catholics are not called upon Grand Juries in the proportion in which they are entitled, by their rank and fortune. The Duke of Bedford did all he could to give them the benefit of those laws which are already passed in their favour. But power is seldom entrusted in this country to one of the Duke of Bedford's liberality ; and every thing has fallen back in the hands of his successors into the ancient division of the privileged and degraded castes. We do not mean to cast any reflection upon the present Secretary for Ireland, whom we believe to be upon this subject a very liberal politician, and on all subjects an honourable and excellent man. The Government under which he serves allows him to indulge in a little harmless liberality ; but it is perfectly understood that nothing is intended to be done for the Catholics ; that no loaves and fishes will be lost by indulgence in Protestant insolence and tyranny ; and, therefore, among the generality of Irish Protestants, insolence, tyranny, and exclusion continue to operate. However eligible the Catholic may be, he is not elected ; whatever barriers may be thrown down, he does not advance a step. He was first kept out by law ; he is now kept out by opinion and habit. They have been so long in chains, that nobody believes they are capable of using their hands and feet.

It is not however the only or the worst misfortune of the Catholics, that the relaxations of the law are hitherto of little benefit to them ; the law is not yet sufficiently relaxed. A Catholic, as every body knows, cannot be made sheriff ; cannot be in Parliament ; cannot be a director of the Irish Bank ; cannot fill

the great departments of the law, the army, and the navy ; is cut off from all the high objects of human ambition, and treated as a marked and degraded person.

The common admission now is, that the Catholics are to the Protestants in Ireland as about 4 to 1 — of which Protestants, not more than *one half* belong to the Church of Ireland. This, then, is one of the most striking features in the state of Ireland. That the great mass of the population is completely subjugated and overawed by a handful of comparatively recent settlers,—in whom all the power and patronage of the country is vested,—who have been reluctantly compelled to desist from still greater abuses of authority,—and who look with trembling apprehension to the increasing liberality of the Parliament and the country towards these unfortunate persons whom they have always looked upon as their property and their prey.

Whatever evils may result from these proportions between the oppressor and the oppressed—to whatever dangers a country so situated may be considered to be exposed—these evils and dangers are rapidly increasing in Ireland. The proportion of Catholics to Protestants is infinitely greater now than it was thirty years ago, and is becoming more and more favourable to the former. By a return made to the Irish House of Lords in 1732, the proportion of Catholics to Protestants was not 2 to 1. It is now (as we have already observed) 4 to 1 ; and the causes which have thus altered the proportion in favour of the Catholics, are sufficiently obvious to any one acquainted with the state of Ireland. The Roman Catholic priest resides ; his income entirely depends upon the number of his flock ; and he must exert

himself, or he starves. There is some chance of success, therefore, in *his* efforts to convert; but the Protestant clergyman, if he were equally eager, has little or no probability of persuading so much larger a proportion of the population to come over to his church. The Catholic clergyman belongs to a religion that has always been more desirous of gaining proselytes than the Protestant church; and he is animated by a sense of injury and a desire of revenge. Another reason for the disproportionate increase of Catholics is, that the Catholics will marry upon means which the Protestant considers as insufficient for marriage. A few potatoes and a shed of turf, are all that Luther has left for the Romanist; and, when the latter gets these, he instantly begins upon the great Irish manufacture of children. But a Protestant belongs to the sect that eats the fine flour, and leaves the bran to others; he must have comforts, and he does not marry till he gets them. He would be ashamed if he were seen living as a Catholic lives. This is the principal reason why the Protestants who remain attached to their church do not increase so fast as the Catholics. But in common minds, daily scenes, the example of the majority, the power of imitation, decide their habits, religious as well as civil. A Protestant labourer who works among Catholics, soon learns to think and act and talk as they do—he is not proof against the eternal panegyric which he hears of Father O’Leary. His Protestantism is rubbed away; and he goes at last, after some little resistance, to the chapel, where he sees every body else going.

These eight Catholics not only hate the ninth man, the Protestant of the Establishment, for the unjust privileges he enjoys—not only remember that the

lands of their father were given to his father—but they find themselves forced to pay for the support of his religion. In the wretched state of poverty in which the lower orders of Irish are plunged, it is not without considerable effort that they can pay the few shillings necessary for the support of their Catholic priest; and when this is effected, a tenth of the potatoes in the garden are to be set out for the support of a persuasion, the introduction of which into Ireland they consider as the great cause of their political inferiority, and all their manifold wretchedness. In England, a labourer can procure constant employment—or he can, at the worst, obtain relief from his parish. Whether tithe operates as a tax upon him, is known only to the political economist: if he does pay it, he does not know that he pays it; and the burthen of supporting the Clergy is at least kept out of his view. But, in Ireland, the only method in which a poor man lives, is by taking a small portion of land, in which he can grow potatoes: seven or eight months out of twelve, in many parts of Ireland, there is no constant employment of the poor: and the potatoe farm is all that shelters them from absolute famine. If the Pope were to come in person, and seize upon every tenth potatoe, the poor peasant would scarcely endure it. With what patience, then, can he see it tossed into the cart of the heretic Rector, who has a church without a congregation, and a revenue without duties?

We do not say whether these things are right or wrong—whether they want a remedy at all—or what remedy they want; but we paint them in those colours in which they appear to the eye of poverty and ignorance, without saying whether those colours are false or true. Nor is the case at all comparable

to that of Dissenters paying tithe in England ; which case is precisely the reverse of what happens in Ireland, for it is the contribution of a very small minority to the religion of a very large majority ; and the numbers on either side make all the difference in the argument. To exasperate the poor Catholic still more, the rich graziers of the parish — or the squire in his parish — pay no tithe at all for their grass land. Agistment tithe is abolished in Ireland ; and the burthen of supporting two Churches seems to devolve upon the poorer Catholics, struggling with plough and spade in small scraps of dearly-rented land. Tithes seem to be collected in a more harsh manner than they are collected in England. The minute subdivisions of land in Ireland — the little connexion which the Protestant clergyman commonly has with the Catholic population of his parish, have made the introduction of tithe-proctors very general — sometimes as the agent of the clergyman — sometimes as the lessee or middle-man between the clergyman and the cultivator of the land ; but, in either case, practised, dexterous estimators of tithe. The English clergymen, in general, are far from exacting the whole of what is due to them, but sacrifice a little to the love of popularity, or to the dread of odium. A system of tithe-proctors established all over England (as it is in Ireland), would produce general disgust and alienation from the Established Church.

‘ During the administration of Lord Halifax,’ says Mr. Hardy, in quoting the opinion of Lord Charlemont upon tithes paid by Catholics, ‘ Ireland was dangerously disturbed in its southern and northern regions. In the south principally, in the counties of Kilkenny, Limerick, Cork, and Tipperary, the White Boys now made their first appearance ; those White Boys, who have ever since occasionally disturbed

the public tranquillity, without any rational method having been as yet pursued to eradicate this disgraceful evil. When we consider, that the very same district has been for the long space of seven and twenty years liable to frequent returns of the same disorder into which it has continually relapsed, in spite of all the violent remedies from time to time administered by our political quacks, we cannot doubt but that some real, peculiar, and topical cause must exist; and yet, neither the removal, nor even the investigation of this cause, has ever once been seriously attempted. Laws of the most sanguinary and unconstitutional nature have been enacted; the country has been disgraced, and exasperated by frequent and bloody executions; and the gibbet, that perpetual resource of weak and cruel legislators, has groaned under the multitude of starving criminals: yet, while the cause is suffered to exist, the effects will ever follow. The amputation of limbs will never eradicate a prurient humour, which must be sought in its source, and there remedied.'

'I wish,' continues Mr. Wakefield, 'for the sake of humanity, and for the honour of the Irish character, that the gentlemen of that country would take this matter into their serious consideration. Let them only for a moment place themselves in the situation of the half-famished cottier, surrounded by a wretched family, clamorous for food; and judge what his feelings must be, when he sees the tenth part of the produce of his potatoe garden exposed at harvest time to public *cant*; or, if he have given a promissory note for the payment of a certain sum of money, to compensate for such tithe when it becomes due, to hear the heart-rending cries of his offspring clinging round him, and lamenting for the milk of which they are deprived, by the cows being driven to the pound, to be sold to discharge the debt. Such accounts are not the creations of fancy; the facts do exist, and are but too common in Ireland. Were one of them transferred to canvas by the hand of genius, and exhibited to English humanity, that heart must be callous indeed that could refuse its sympathy. I have seen the cow, the favourite cow, driven away, accompanied by the sighs, the tears, and the imprecations of a whole family, who were paddling after, through wet and dirt,

to take their last affectionate farewell of this their only friend and benefactor, at the pound gate. I have heard with emotions which I can scarcely describe, deep curses repeated from village to village as the cavalcade proceeded. I have witnessed the group pass the domain walls of the opulent grazier, whose numerous herds were cropping the most luxuriant pastures, while he was secure from any demand for the tithe of their food, looking on with the most unfeeling indifference.' — Ibid. p. 486.

In Munster, where tithe of potatoes is exacted, risings against the system have constantly occurred during the last forty years. In Ulster, where no such tithe is required, these insurrections are unknown. The double church which Ireland supports, and that painful visible contribution towards it which the poor Irishman is compelled to make from his miserable pittance, is one great cause of those never-ending insurrections, burnings, murders, and robberies, which have laid waste that ill-fated country for so many years. The unfortunate consequence of the civil disabilities, and the church payments under which the Catholics labour, is a rooted antipathy to this country. They hate the English Government from historical recollection, actual suffering, and disappointed hope; and till they are better treated, they will continue to hate it. At this moment, in a period of the most profound peace, there are twenty-five thousand of the best disciplined and best appointed troops in the world in Ireland, with bayonets fixed, presented arms, and in the attitude of present war: nor is there a man too much — nor would Ireland be tenable without them. When it was necessary last year (or thought necessary) to put down the children of Reform, we were forced to make a new levy of troops in this country — not a man could be spared from Ireland. The moment they had embarked,

Peep-of-day Boys, Heart-of-Oak Boys, Twelve-o'clock Boys, Heart-of-Flint Boys, and all the bloody boyhood of the Bog of Allen, would have proceeded to the antient work of riot, rapine, and disaffection. Ireland, in short, till her wrongs are redressed, and a more liberal policy is adopted towards her, will always be a cause of anxiety and suspicion to this country ; and, in some moment of our weakness and depression, will forcibly extort what she would now receive with gratitude and exultation.

Ireland is situated close to another island of greater size, speaking the same language, very superior in civilisation, and the seat of government. The consequence of this is the emigration of the richest and most powerful part of the community—a vast drain of wealth—and the absence of all that wholesome influence which the representatives of ancient families residing upon their estates, produce upon their tenantry and dependants. Can any man imagine that the scenes which have been acted in Ireland within these last twenty years, would have taken place, if such vast proprietors as the Duke of Devonshire, the Marquis of Hertford, the Marquis of Lansdown, Earl Fitzwilliam, and many other men of equal wealth, had been in the constant habit of residing upon their Irish, as they are upon their English estates? Is it of no consequence to the order, and the civilisation of a large district, whether the great mansion is inhabited by an insignificant, perhaps a mischievous, attorney, in the shape of agent, or whether the first and greatest men of the United Kingdoms, after the business of Parliament is over, come with their friends and families, to exercise hospitality, to spend large revenues, to diffuse information, and to improve manners? This evil is a very serious one

to Ireland ; and, as far as we see, incurable. For if the present large estates were, by the dilapidation of families, to be broken to pieces and sold, others equally great would, in the free circulation of property, speedily accumulate ; and the moment any possessor arrived at a certain pitch of fortune, he would probably choose to reside in the better country, —near the Parliament, or the Court.

This absence of great proprietors in Ireland necessarily brings with it, or, if not necessarily, has actually brought with it, the employment of middlemen, which forms one other standing and regular Irish grievance. We are well aware of all that can be said in defence of middlemen ; that they stand between the little farmer and the great proprietor, as the shopkeeper does between the manufacturer and consumer ; and, in fact, by their intervention, save time, and therefore expense. This may be true enough in the abstract ; but the particular nature of land must be attended to. The object of the man who makes cloth is to sell his cloth at the present market, for as high a price as he can obtain. If that price is too high, it soon falls ; but no injury is done to his machinery by the superior price he has enjoyed for a season—he is just as able to produce cloth with it, as if the profits he enjoyed had always been equally moderate : he has no fear, therefore, of the middleman, or of any species of moral machinery which may help to obtain for him the greatest present prices. The same would be the feeling of any one who let out a steam-engine, or any other machine, for the purposes of manufacture ; he would naturally take the highest price he could get : for he might either let his machine for a price proportionate to the work it did, or the repairs, estimable with the greatest pre-

cision, might be thrown upon the tenant; in short, he could hardly ask any rent too high for his machine which a responsible person would give; dilapidation would be so visible, and so calculable in such instances, that any secondary lease, or subletting, would be rather an increase of security than a source of alarm. Any evil from such a practice would be improbable, measureable, and remediable. In land, on the contrary, the object is not to get the highest prices absolutely, but to get the highest prices which will not injure the machine. One tenant may offer and pay double the rent of another, and in a few years leave the land in a state which will effectually bar all future offers of tenancy. It is of no use to fill a lease full of clauses and covenants; a tenant who pays more than he ought to pay, or who pays even to the last farthing which he ought to pay, will rob the land, and injure the machine, in spite of all the attornies in England. He will rob it even if he means to remain upon it — driven on by present distress, and anxious to put off the day of defalcation and arrear. The damage is often difficult of detection — not easily calculated, not easily to be proved; such for which juries (themselves perhaps farmers) will not willingly give sufficient compensation. And if this is true in England, it is much more strikingly true in Ireland, where it is extremely difficult to obtain verdicts for breaches of covenant in leases.

The only method, then, of guarding the machine from real injury is, by giving to the actual occupier such advantage in his contract, that he is unwilling to give it up — that he has a real interest in retaining it, and is not driven by the distresses of the present moment to destroy the future productiveness of the soil. Any rent which the landlord accepts more than

this, or any system by which more rent than this is obtained, is to borrow money upon the most usurious and profligate interest — to increase the revenue of the present day by the absolute ruin of the property. Such is the effect produced by a middleman: he gives high prices that he may obtain higher from the occupier; more is paid by the actual occupier than is consistent with the safety and preservation of the machine; the land is run out, and, in the end, that maximum of rent we have described is not obtained; and not only is the property injured by such a system, but in Ireland the most shocking consequences ensue from it. There is little manufacture in Ireland; the price of labour is low, the demand for labour irregular. If a poor man is driven, by distress of rent, from his potatoe garden, he has no other resource — all is lost: he will do the impossible (as the French say) to retain it; subscribe any bond, and promise any rent. The middleman has no character to lose; and he knew, when he took up the occupation, that it was one with which pity had nothing to do. On he drives; and backward the poor peasant recedes, losing something at every step, till he comes to the very brink of despair; and then he recoils and murders his oppressor, and is a *White Boy* or a *Right Boy*: — the soldier shoots him, and the judge hangs him.

In the debate which took place in the Irish House of Commons, upon the bill for preventing tumultuous risings and assemblies, on the 31st of January, 1787, the Attorney-General submitted to the House the following narrative of facts.

‘The commencement,’ said he, ‘was in one or two parishes in the county of Kerry; and they proceeded thus. The people assembled in a Catholic Chapel, and there took an oath

to obey the laws of Captain Right, and to starve the Clergy. They then proceeded to the next parishes, on the following Sunday, and there swore the people in the same manner; with this addition, that they (the people last sworn) should on the ensuing Sunday proceed to the Chapels of their next neighbouring parishes, and swear the inhabitants of those parishes in like manner. Proceeding in this manner, they very soon went through the province of Munster. The first object was, the *reformation of tithes*. They swore not to give more than a certain price per acre; not to assist, or allow them to be assisted, in drawing the tithe, and to permit *no proctor*. They next took upon them to prevent the collection of parish cesses; next to nominate parish clerks, and in some cases curates: to say what Church should or should not be repaired; and in one case to threaten that they would burn a *new* Church, if the *old* one were not given for a Mass-house. At last, they proceeded to regulate the price of lands; to raise the price of labour; and to oppose the collection of the hearth money, and other taxes. Bodies of 5000 of them have been seen to march through the country unarmed, and if met by any Magistrate, *they never offered the smallest rudeness or offence*; on the contrary, they had allowed persons charged with crimes to be taken from amongst them by the Magistrate *alone*, unaided by any force.'

'The Attorney-General said he was well acquainted with the province of Munster, and that it was impossible for human wretchedness to *exceed that of the peasantry of that province*. The unhappy tenantry were *ground to powder* by relentless landlords; that, far from being able to give the Clergy their just dues, they had not food or raiment for themselves — the landlord grasped the whole; and sorry was he to add, that, not satisfied with the present extortion, some landlords had been so base as to instigate the insurgents to rob the Clergy of their tithes, not in order to alleviate the distresses of the tenantry, but that they might add the Clergy's share to the cruel rack-rents they already paid. The poor people of Munster lived in a *more abject state of poverty than human nature could be supposed equal to bear*.' — *Grattan's Speeches*, vol. i. 292.

We are not, of course, in such a discussion, to be governed by names. A middleman might be tied up, by the strongest legal restriction, as to the price he was to exact from the under-tenants, and then he would be no more pernicious to the estate than a steward. A steward might be protected in exactions as severe as the most rapacious middleman; and then, of course, it would be the same thing under another name. The practice to which we object is, the too common method in Ireland of extorting the last farthing which the tenant is willing to give for land, rather than quit it: and the machinery by which such practice is carried into effect, is that of the middleman. It is not only that it ruins the land; it ruins the people also. They are made so poor — brought so near the ground — that they can sink no lower; and burst out at last into all the acts of desperation and revenge, for which Ireland is so notorious. Men who have money in their pockets, and find that they are improving in their circumstances, don't do these things. Opulence, or the hope of opulence or comfort, is the parent of decency, order, and submission to the laws. A landlord in Ireland understands the luxury of carriages and horses; but has no relish for the greater luxury of surrounding himself with a moral and grateful tenantry. The absent proprietor looks only to revenue, and cares nothing for the disorder and degradation of a country which he never means to visit. There are very honourable exceptions to this charge; but there are too many living instances that it is just. The rapacity of the Irish landlord induces him to allow of the extreme division of his lands. When the daughter marries, a little portion of the little farm is broken off — another corner for Patrick, and another for

Dermot — till the land is broken into sections, upon one of which an English cow could not stand. Twenty mansions of misery are thus reared instead of one. A louder cry of oppression is lifted up to Heaven ; and fresh enemies to the English name, and power, are multiplied on the earth. The Irish gentlemen, too, extremely desirous of political influence, multiply freeholds, and split votes ; and this propensity tends of course to increase the miserable redundance of living beings, under which Ireland is groaning. Among the manifold wretchedness to which the poor Irish tenant is liable, we must not pass over the practice of driving for rent. A lets land to B, who lets it to C, who lets it again to D. D pays C his rent, and C pays B. But if B fails to pay A, the cattle of B, C, D are all driven to the pound, and, after the interval of a few days, sold by auction. A general driving of this kind very frequently leads to a bloody insurrection. It may be ranked among the classical grievances of Ireland.

Potatoes enter for a great deal into the present condition of Ireland. They are much cheaper than wheat ; and it is so easy to rear a family upon them, that there is no check to population from the difficulty of procuring food. The population therefore goes on with a rapidity approaching almost to that of new countries, and in a much greater ratio than the improving agriculture and manufactures of the country can find employment for it. All degrees of all nations begin with living in pig-styes. The king or the priest first gets out of them ; then the noble, then the pauper, in proportion as each class becomes more and more opulent. Better tastes arise from better circumstances ; and the luxury of one period is the wretchedness and poverty of another. En-

glish peasants, in the time of Henry the Seventh, were lodged as badly as Irish peasants now are ; but the population was limited by the difficulty of procuring a corn subsistence. The improvements of this kingdom were more rapid ; the price of labour rose ; and, with it, the luxury and comfort of the peasant, who is now decently lodged and clothed, and who would think himself in the last stage of wretchedness, if he had nothing but an iron pot in a turf house, and plenty of potatoes in it. The use of the potatoe was introduced into Ireland when the wretched accommodation of her own peasantry bore some proportion to the state of those accommodations all over Europe. But they have increased their population so fast, and, in conjunction with the oppressive government of Ireland retarding improvement, have kept the price of labour so low, that the Irish poor have never been able to emerge from their mud cabins, or to acquire any taste for cleanliness and decency of appearance. Mr. Curwen has the following description of Irish cottages.

‘ These mansions of miserable existence, for so they may truly be described, conformably to our general estimation of those indispensable comforts requisite to constitute the happiness of rational beings, are most commonly composed of two rooms on the ground floor, a most appropriate term, for they are literally on the earth ; the surface of which is not unfrequently reduced a foot or more, to save the expense of so much outward walling. The one is a refectory, the other the dormitory. The furniture of the former, if the owner ranks in the upper part of the scale of scantiness, will consist of a kitchen dresser, well provided and highly decorated with crockery — not less apparently the pride of the husband, than the result of female vanity in the wife : which, with a table, a chest, a few stools, and an iron pot, complete the catalogue of conveniences generally found, as belonging to the cabin ;

while a spinning-wheel, furnished by the Linen Board, and a loom, ornament vacant spaces, that otherwise would remain unfurnished. In fitting up the latter, which cannot, on any occasion, or by any display, add a feather to the weight or importance expected to be excited by the appearance of the former, the inventory is limited to one, and sometimes two beds, serving for the repose of the whole family! However downy these may be to limbs impatient for rest, their coverings appeared to be very slight; and the whole of the apartment created reflections of a very painful nature. Under such privations, with a wet mud floor, and a roof in tatters, how idle the search for comforts! — *Curwen*, I. 112, 113.

To this extract we shall add one more on the same subject.

‘The gigantic figure, bare-headed before me, had a beard that would not have disgraced an ancient Israelite — he was without shoes or stockings — and almost a sans-culotte — with a coat, or rather a jacket, that appeared as if the first blast of wind would tear it to tatters. Though his garb was thus tattered, he had a manly commanding countenance. I asked permission to see the inside of his cabin, to which I received his most courteous assent. On stooping to enter at the door I was stopped, and found that permission from another was necessary before I could be admitted. A pig, which was fastened to a stake driven into the floor, with length of rope sufficient to permit him the enjoyment of sun and air, demanded some courtesy, which I showed him, and was suffered to enter. The wife was engaged in boiling thread; and by her side, near the fire, a lovely infant was sleeping, without any covering, on a bare board. Whether the fire gave additional glow to the countenance of the babe, or that Nature impressed on its unconscious cheek a blush that the lot of man should be exposed to such privations, I will not decide; but if the cause be referrible to the latter, it was in perfect unison with my own feelings. Two or three other children crowded round the mother: on their rosy countenances health seemed established in spite of filth and ragged garments. The dress of the poor woman was barely sufficient

to satisfy decency. Her countenance bore the impression of a set melancholy, tinged with an appearance of ill health. The hovel, which did not exceed twelve or fifteen feet in length, and ten in breadth, was half obscured by smoke — chimney or window I saw none; the door served the various purposes of an inlet to light, and the outlet to smoke. The furniture consisted of two stools, an iron pot, and a spinning-wheel — while a sack stuffed with straw, and a single blanket laid on planks, served as a bed for the repose of the whole family. Need I attempt to describe my sensations? The statement alone cannot fail of conveying, to a mind like yours, an adequate idea of them — I could not long remain a witness to this acmé of human misery. As I left the deplorable habitation, the mistress followed me to repeat her thanks for the trifle I had bestowed. This gave me an opportunity of observing her person more particularly. She was a tall figure, her countenance composed of interesting features, and with every appearance of having once been handsome.

‘Unwilling to quit the village without first satisfying myself whether what I had seen was a solitary instance, or a sample of its general state; or whether the extremity of poverty I had just beheld had arisen from peculiar improvidence and want of management in one wretched family; I went into an adjoining habitation, where I found a poor old woman of eighty, whose miserable existence was painfully continued by the maintenance of her granddaughter. Their condition, if possible, was more deplorable.’ — *Curwen*, I. 181—183.

This wretchedness, of which all strangers who visit Ireland are so sensible, proceeds certainly, in great measure, from their accidental use of a food so cheap, that it encourages population to an extraordinary degree, lowers the price of labour, and leaves the multitudes which it calls into existence almost destitute of every thing but food. Many more live, in consequence of the introduction of potatoes; but all live in greater wretchedness. In the progress of population, the potatoe must of course become at last as

difficult to be procured as any other food ; and then let the political economist calculate what the immensity and wretchedness of a people must be, where the farther progress of population is checked by the difficulty of procuring potatoes.

The consequence of the long mismanagement and oppression of Ireland, and of the singular circumstances in which it is placed, is, that it is a semi-barbarous country :—more shame to those who have thus ill treated a fine country, and a fine people ; but it is part of the present case of Ireland. The barbarism of Ireland is evinced by the frequency and ferocity of duels,—the hereditary clannish feuds of the common people,—and the fights to which they give birth,—the atrocious cruelties practised in the insurrections of the common people—and their proneness to insurrection. The lower Irish live in a state of greater wretchedness than any other people in Europe, inhabiting so fine a soil and climate. It is difficult, often impossible, to execute the processes of law. In cases where gentlemen are concerned, it is often not even attempted. The conduct of undersheriffs is often very corrupt. We are afraid the magistracy of Ireland is very inferior to that of this country ; the spirit of jobbing and bribery is very widely diffused, and upon occasions when the utmost purity prevails in the sister kingdom. Military force is necessary all over the country, and often for the most common and just operations of Government. The behaviour of the higher to the lower orders, is much less gentle and decent than in England. Blows from superiors to inferiors are more frequent, and the punishment for such aggression more doubtful. The word *gentleman* seems, in Ireland, to put an end to most processes of law. Arrest a gentleman!!!!—

take out a warrant against a gentleman—are modes of operation not very common in the administration of Irish justice. If a man strikes the meanest peasant in England, he is either knocked down in his turn, or immediately taken before a magistrate. It is impossible to live in Ireland, without perceiving the various points in which it is inferior in civilisation. Want of unity in feeling and interest among the people,—irritability, violence, and revenge,—want of comfort and cleanliness in the lower orders,—habitual disobedience to the law,—want of confidence in magistrates,—corruption, venality, the perpetual necessity of recurring to military force,—all carry back the observer to that remote and early condition of mankind, which an Englishman can learn only in the pages of the antiquary or the historian. We do not draw this picture for censure, but for truth. We admire the Irish,—feel the most sincere pity for the state of Ireland,—and think the conduct of the English to that country to have been a system of atrocious cruelty and contemptible meanness. With such a climate, such a soil, and such a people, the inferiority of Ireland to the rest of Europe is directly chargeable to the long wickedness of the English Government.

A direct consequence of the present uncivilised state of Ireland is, that very little English capital travels there. The man who deals in steam-engines, and warps and woofs, is naturally alarmed by Peep-of-Day Boys, and nocturnal Carders; his object is to buy and sell as quickly and quietly as he can; and he will naturally bear high taxes and rivalry in England, or emigrate to any part of the Continent, or to America, rather than plunge into the tumult of Irish politics and passions. There is nothing which Ireland wants more than large manufacturing towns, to take

off its superfluous population. But internal peace must come first, and then the arts of peace will follow. The foreign manufacturer will hardly think of embarking his capital, where he cannot be sure that his existence is safe. Another check to the manufacturing greatness of Ireland, is the scarcity—not of coal—but of good coal, cheaply raised ; an article in which (in spite of papers in the Irish Transactions) they are lamentably inferior to the English.

Another consequence from some of the causes we have stated, is the extreme idleness of the Irish labourer. There is nothing of the value of which the Irish seem to have so little notion as that of time. They scratch, pick, daudle, stare, gape, and do any thing but strive and wrestle with the task before them. The most ludicrous of all human objects, is an Irishman ploughing. — A gigantic figure—a seven foot machine for turning potatoes into human nature, wrapt up in an immense great coat, and urging on two starved ponies, with dreadful imprecations, and uplifted shillala. The Irish crow discerns a coming perquisite, and is not inattentive to the proceedings of the steeds. The furrow which is to be the depositary of the future crop, is not unlike, either in depth or regularity, to those domestic furrows which the nails of the meek and much-injured wife plough, in some family quarrel, upon the cheeks of the deservedly punished husband. The weeds seem to fall contentedly, knowing that they have fulfilled their destiny, and left behind them, for the resurrection of the ensuing spring, an abundant and healthy progeny. The whole is a scene of idleness, laziness, and poverty, of which it is impossible, in this active and enterprising country, to form the most distant conception ; but strongly indicative of habits, whether

secondary or original, which will long present a powerful impediment to the improvement of Ireland.

The Irish character contributes something to retard the improvements of that country. The Irishman has many good qualities : he is brave, witty, generous, eloquent, hospitable, and open-hearted ; but he is vain, ostentatious, extravagant, and fond of display — light in counsel — deficient in perseverance — without skill in private or public economy — an enjoyer, not an acquirer — one who despises the slow and patient virtues — who wants the superstructure without the foundation — the result without the previous operation — the oak without the acorn and the three hundred years of expectation. The Irish are irascible, prone to debt, and to fight, and very impatient of the restraints of law. Such a people are not likely to keep their eyes steadily upon the main chance, like the Scotch or the Dutch. England strove very hard, at one period, to compel the Scotch to pay a double Church ; — but Sawney took his pen and ink ; and finding what a sum it amounted to, became furious, and drew his sword. God forbid the Irishman should do the same ; the remedy, now, would be worse than the disease ; but if the oppressions of England had been more steadily resisted a century ago, Ireland would not have been the scene of poverty, misery, and distress which it now is.

The Catholic religion, among other causes, contributes to the backwardness and barbarism of Ireland. Its debasing superstition, childish ceremonies, and the profound submission to the priesthood which it teaches, all tend to darken men's minds, to impede the progress of knowledge and inquiry, and to prevent Ireland from becoming as free, as powerful, and

as rich as the sister kingdom. Though sincere friends to Catholic emancipation, we are no advocates for the Catholic religion. We should be very glad to see a general conversion to Protestantism among the Irish ; but we do not think that violence, privations, and incapacities, are the proper methods of making proselytes.

Such, then, is Ireland at this period, — a land more barbarous than the rest of Europe, because it has been worse treated and more cruelly oppressed. Many of the incapacities and privations to which the Catholics were exposed, have been removed by law ; but, in such instances, they are still incapacitated and deprived by custom. Many cruel and oppressive laws are still enforced against them. A ninth part of the population engrosses all the honours of the country ; the other nine pay a tenth of the product of the earth for the support of a religion in which they do not believe. There is little capital in the country. The great and rich men are called by business, or allured by pleasure, into England ; their estates are given up to factors, and the utmost farthing of rent extorted from the poor, who, if they give up the land, cannot get employment in manufactures, or regular employment in husbandry. The common people use a sort of food so very cheap, that they can rear families, who cannot procure employment, and who have little more of the comforts of life than food. The Irish are light-minded — want of employment has made them idle — they are irritable and brave — have a keen remembrance of the past wrongs they have suffered, and the present wrongs they are suffering from England. The consequence of all this is, eternal riot and insurrection, a whole army of soldiers in time of profound peace, and

general rebellion whenever England is busy with other enemies, or off her guard ! And thus it will be while the same causes continue to operate, for ages to come, — and worse and worse as the rapidly increasing population of the Catholics becomes more and more numerous.

The remedies are, time and justice ; and that justice consists in repealing all laws which make any distinction between the two religions ; in placing over the government of Ireland, not the stupid, amiable, and insignificant noblemen who have too often been sent there, but men who feel deeply the wrongs of Ireland, and who have an ardent wish to heal them ; who will take care that Catholics, when eligible, shall be elected ; who will share the patronage of Ireland proportionally among the two parties, and give to just and liberal laws the same vigour of execution which has hitherto been reserved only for decrees of tyranny, and the enactments of oppression. The injustice and hardship of supporting two churches must be put out of sight, if it cannot or ought not to be cured. The political economist, the moralist, and the satirist, must combine to teach moderation and superintendence to the great Irish proprietors. Public talk and clamour may do something for the poor Irish, as it did for the slaves in the West Indies. Ireland will become more quiet under such treatment, and then more rich, more comfortable, and more civilised ; and the horrid spectacle of folly and tyranny, which it at present exhibits, may in time be removed from the eyes of Europe.

There are two eminent Irishmen now in the House of Commons, Lord Castlereagh and Mr. Canning, who will subscribe to the justness of every syllable we have said upon this subject ; and who have it in

their power, by making it the condition of their remaining in office, to liberate their native country, and raise it to its just rank among the nations of the earth. Yet the Court buys them over, year after year, by the pomp and perquisites of office; and year after year they come into the House of Commons, feeling deeply, and describing powerfully, the injuries of five millions of their countrymen, — and continue members of a Government that inflicts those evils, under the pitiful delusion that it is not a Cabinet Question, — as if the scratchings and quarrellings of Kings and Queens could alone cement politicians together in indissoluble unity, while the fate and fortune of one third of the empire might be complimented away from one minister to another, without the smallest breach in their Cabinet alliance. Politicians, at least honest politicians, should be very flexible and accommodating in little things, very rigid and inflexible in great things. And is this not a great thing? Who has painted it in finer and more commanding eloquence than Mr. Canning? Who has taken a more sensible and statesman-like view of our miserable and cruel policy, than Lord Castlereagh? You would think, to hear them, that the same planet could not contain them and the oppressors of their country, — perhaps not the same solar system. Yet for money, claret, and patronage, they lend their countenance, assistance, and friendship, to the Ministers who are the stern and inflexible enemies to the emancipation of Ireland!

Thank God that all is not profligacy and corruption in the history of that devoted people — and that the name of Irishman does not always carry with it the idea of the oppressor or the oppressed — the plunderer or the plundered — the tyrant or the slave.

Great men hallow a whole people, and lift up all who live in their time. What Irishman does not feel proud that he has lived in the days of GRATTAN? who has not turned to him for comfort, from the false friends and open enemies of Ireland? who did not remember him in the days of its burnings and wastings and murders? No Government ever dismayed him — the world could not bribe him — he thought only of Ireland — lived for no other object — dedicated to her his beautiful fancy, his elegant wit, his manly courage, and all the splendour of his astonishing eloquence. He was so born, and so gifted, that poetry, forensic skill, elegant literature, and all the highest attainments of human genius, were within his reach; but he thought the noblest occupation of a man was to make other men happy and free; and in that straight line he went on for fifty years, without one side-look, without one yielding thought, without one motive in his heart which he might not have laid open to the view of God and man. He is gone! — but there is not a single day of his honest life of which every good Irishman would not be more proud, than of the whole political existence of his countrymen, — the annual deserters and betrayers of their native land.

SPRING GUNS. (E. REVIEW, 1821.)

The Shooter's Guide. By J. B. Johnson. 12mo. Edwards and Knibb, 1819.

WHEN Lord Dacre (then Mr. Brand) brought into the House of Commons his bill for the amendment of the Game Laws, a system of greater mercy and humanity was in vain recommended to that popular branch of the Legislature. The interests of humanity, and the interests of the lord of the manor, were not, however, opposed to each other; nor any attempt made to deny the superior importance of the last. No such bold or alarming topics were agitated; but it was contended that, if laws were less ferocious, there would be more partridges — if the lower orders of mankind were not torn from their families and banished to Botany Bay, hares and pheasants would be increased in number, or, at least, not diminished. It is not, however, till after long experience, that mankind ever think of recurring to humane expedients for effecting their objects. The rulers who ride the people never think of coaxing and patting till they have worn out the lashes of their whips, and broken the rowels of their spurs. The legislators of the trigger replied, that two laws had lately passed which would answer their purpose of preserving game; the one, an act for transporting men found with arms in their hands for the purposes of killing game in the night; the other, an act for rendering the buyers of the game equally guilty with the seller, and for involving both in the same penalty. Three seasons

have elapsed since the last of these laws was passed ; and we appeal to the experience of all the great towns in England, whether the difficulty of procuring game is in the slightest degree increased ? — whether hares, partridges, and pheasants are not purchased with as much facility as before the passing this act ? — whether the price of such unlawful commodities is even in the slightest degree increased ? Let the Assize and Sessions' Calendars bear witness, whether the law for transporting poachers has not had the most direct tendency to encourage brutal assaults and ferocious murders. There is hardly now a jail-delivery in which some gamekeeper has not murdered a poacher — or some poacher a gamekeeper. If the question concerned the payment of five pounds, a poacher would hardly risk his life rather than be taken ; but when he is to go to Botany Bay for seven years, he summons together his brother poachers — they get brave from rum, numbers, and despair — and a bloody battle ensues.

Another method by which it is attempted to defeat the depredations of the poacher, is, by setting spring guns to murder any person who comes within their reach ; and it is to this last new feature in the *supposed* Game Laws, to which, on the present occasion, we intend principally to confine our notice.

We utterly disclaim all hostility to the game laws in general. Game ought to belong to those who feed it. All the landowners in England are fairly entitled to all the game in England. These laws are constructed upon a basis of substantial justice ; but there is a great deal of absurdity and tyranny mingled with them, and a perpetual and vehement desire on the part of the country gentlemen to push the provisions

of these laws up to the highest point of tyrannical severity.

‘ Is it lawful to put to death by a spring gun, or any other machine, an unqualified person trespassing upon your woods or fields in pursuit of game, and who has received due notice of your intention, and of the risk to which he is exposed ?’ This, we think, is stating the question as fairly as can be stated. We purposely exclude gardens, orchards, and all contiguity to the dwelling-house. We exclude, also, all felonious intention on the part of the deceased. The object of his expedition shall be proved to be game ; and the notice he received of his danger shall be allowed to be as complete as possible. It must also be part of the case, that the spring gun was placed there for the express purpose of defending the game, by killing or wounding the poacher, or spreading terror, or doing any thing that a reasonable man ought to know would happen from such a proceeding.

Suppose any gentleman were to give notice that all other persons must abstain from his manors ; that he himself and his servants paraded the woods and fields with loaded pistols and blunderbusses, and would shoot any body who fired at a partridge ; and suppose he were to keep his word, and shoot through the head some rash trespasser who defied this bravado, and was determined to have his sport : — Is there any doubt that he would be guilty of murder ? We suppose no resistance on the part of the trespasser ; but that, the moment he passes the line of demarcation with his dogs and gun, he is shot dead by the proprietor of the land from behind a tree. If this is not murder, what is murder ? We will make the case a little better for the homicide squire. It shall be night ; the poacher, an unqualified person, steps over

the line of demarcation with his nets and snares, and is instantly shot through the head by the pistol of the proprietor. We have no doubt that this would be murder — that it ought to be considered as murder, and punished as murder. We think this so clear, that it would be a waste of time to argue it. There is no kind of resistance on the part of the deceased ; no attempt to run away ; he is not even challenged : but instantly shot dead by the proprietor of the wood, for no other crime than *the intention* of killing game unlawfully. We do not suppose that any man, possessed of the elements of law and common sense, would deny this to be a case of murder, let the previous notice to the deceased have been as perfect as it could be. It is true, a trespasser in a park may be killed ; but then it is when he will not render himself to the keepers, upon an hue and cry to stand to the king's peace. But deer are property, game is not ; and this power of slaying deer-stealers is by the 21st Edward I., *de Malefactoribus in Pareis*, and by 3d and 4th William & Mary, c. 10. So rioters may be killed, house-burners, ravishers, felons refusing to be arrested, felons escaping, felons breaking jail, men resisting a civil process — may all be put to death. All these cases of justifiable homicide are laid down and admitted in our books. But who ever heard, that to pistol a poacher was justifiable homicide ? It has long been decided, that it is unlawful to kill a dog who is pursuing game in a manor. ‘ To decide the contrary,’ says Lord Ellenborough, ‘ would outrage reason and sense.’ — *Vere v. Lord Cawdor and King*, 11 *East*, 368. Pointers have always been treated by the legislature with great delicacy and consideration. To ‘ *wish to be a dog, and to bay*

the moon,' is not quite so mad a wish as the poet thought it.

If these things are so, what is the difference between the act of firing yourself, and placing an engine which does the same thing? In the one case, your hand pulls the trigger; in the other, it places the wire which communicates with the trigger, and causes the death of the trespasser. There is the same intention of slaying in both cases — there is precisely the same human agency in both cases; only the steps are rather more numerous in the latter case. As to the bad effects of allowing proprietors of game to put trespassers to death at once, or to set guns that will do it, we can have no hesitation in saying, that the first method, of giving the power of life and death to esquires, would be by far the most humane. For, as we have observed in a previous Essay on the Game Laws, a live armigerous spring gun would distinguish an accidental trespasser from a real poacher — a woman or a boy from a man — perhaps might spare a friend or an acquaintance — or a father of a family with ten children — or a small freeholder who voted for administration. But this new rural artillery must destroy, without mercy and selection, every one who approaches it.

In the case of *Ilot versus Wilks, Esq.*, the four judges, Abbot, Bailey, Holroyd, and Best, gave their opinions *seriatim* on points connected with this question. In this case, as reported in Chetwynd's edition of Burns's Justice, 1820, Vol. II. p. 500., Abbot C. J. observes as follows: —

' I cannot say that repeated and increasing acts of aggression may not reasonably call for increased means of defence and protection. I believe that many of the persons who cause engines of this description to be placed in their grounds, do

not do so with an intention to injure any person, but really believe that the publication of notices will prevent any person from sustaining an injury; and that no person having the notice given him, will be weak and foolish enough to expose himself to the perilous consequences of his trespass. Many persons who place such engines in their grounds, do so for the purpose of preventing, by means of terror, injury to their property, rather than from any motive of doing malicious injury.'

'Increased means of defence and protection,' but increased (his Lordship should remember) from the payment of five pounds to instant death—and instant death inflicted, not by the arm of law, but by the arm of the proprietor—could the Lord Chief Justice of the King's Bench intend to say, that the impossibility of putting an end to poaching by other means would justify the infliction of death upon the offender? Is he so ignorant of the philosophy of punishing, as to imagine he has nothing to do but to give ten stripes instead of two, an hundred instead of ten, and a thousand, if an hundred will not do? to substitute the prison for pecuniary fines, and the gallows instead of the jail? It is impossible so enlightened a Judge can forget, that the sympathies of mankind must be consulted; that it would be wrong to break a person upon the wheel for stealing a penny loaf, and that gradations in punishments must be carefully accommodated to gradations in crime; that if poaching is punished more than mankind in general think it ought to be punished, the fault will either escape with impunity, or the delinquent be driven to desperation; that if poaching and murder are punished equally, every poacher will be an assassin. Besides, too, if the principle is right in the unlimited and unqualified manner in which the Chief Justice puts it—if defence goes on increasing with aggression,

the Legislature at least must determine upon their equal pace. If an act of Parliament made it a capital offence to poach upon a manor, as it is to commit a burglary in a dwelling-house, it might then be as lawful to shoot a person for trespassing upon your manor, as it is to kill a thief for breaking into your house. But the real question is—and so in sound reasoning his Lordship should have put it—‘If the law at this moment determines the aggression to be in such a state, that it merits only a pecuniary fine after summons and proof, has any sporadic squire the right to say, that it shall be punished with death, before any summons and without any proof?’

It appears to us, too, very singular, to say, that many persons who cause engines of this description to be placed in their ground, do not do so with an intention of injuring any person, but really believe that the publication of notices will prevent any person from sustaining an injury, and that no person, having the notice given him, will be weak and foolish enough to expose himself to the perilous consequences of his trespass. But if this is the real belief of the engineer—if he thinks the mere notice will keep people away—then he must think it a mere inutility that the guns should be placed at all: if he thinks that many will be deterred, and a few come, then he must mean to shoot those few. He who believes his gun will never be called upon to do its duty, need set no gun, and trust to rumour of their being set, or being loaded, for his protection. Against the gun and the powder we have no complaint; they are perfectly fair and admissible: our quarrel is with the bullets. He who sets a *loaded* gun, means it should go off if it is touched. But what signifies the mere empty wish that there may be no mischief, when I

perform an action which my common sense tells me may produce the worst mischief? If I hear a great noise in the street, and fire a bullet to keep people quiet, I may not perhaps have intended to kill; I may have wished to have produced quiet by mere terror, and I may have expressed a strong hope that my object has been effected without the destruction of human life. Still I have done that which every man of sound intellect knows is likely to kill; and if any one falls from my act, I am guilty of murder. 'Further,' (says Lord Coke,) 'if there be an evil intent, though that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over the wall, intending only to frighten them, or to give them a little hurt, and thereupon one is killed—this is murder—for he had an ill intent; though that intent extended not to death, and though he knew not the party slain.' (3 *Inst.* 57.) If a man is not mad, he must be presumed to foresee common consequences if he puts a bullet into a spring gun—he must be supposed to foresee that it will kill any poacher who touches the wire—and to that consequence he must stand. We do not suppose all preservers of game to be so bloodily inclined that they would prefer the death of a poacher to his staying away. Their object is to preserve game; they have no objection to preserve the lives of their fellow-creatures also, if both can exist at the same time; if not, the least worthy of God's creatures must fall—the rustic without a soul—not the Christian partridge—not the immortal pheasant—not the rational woodcock, or the accountable hare.

The Chief Justice quotes the instance of glass and spikes fixed upon walls. He cannot mean to infer

from this, because the law connives at the infliction of such small punishments for the protection of property, that it does allow, or ought to allow, proprietors to proceed to the punishment of death. Small means of annoying trespassers may be consistently admitted by the law, though more severe ones are forbidden, and ought to be forbidden; unless it follows, that what is good in any degree, is good in the highest degree. You may correct a servant boy with a switch; but if you bruise him sorely, you are liable to be indicted—if you kill him, you are hanged. A blacksmith corrected his servant with a bar of iron; the boy died, and the blacksmith was executed. Grey's Case, *Kel.* 64, 65. A woman kicked and stamped on the belly of her child—she was found guilty of murder. 1 *East, P. C.* 261. *Si immoderate suo jure utatur, tunc reus homicidii sit.* There is, besides, this additional difference in the two cases put by the Chief Justice, that no publication of notices can be so plain, in the case of the guns, as the sight of the glass or the spikes; for a trespasser may not believe in the notice which he receives, or he may think he shall see the gun, and so avoid it, or that he may have the good luck to avoid it, if he does not see it; whereas, of the presence of the glass or the spikes he can have no doubt; and he has no hope of placing his hand in any spot where they are not. In the one case, he cuts his fingers upon full and perfect notice, the notice of his own senses; in the other case, he loses his life after a notice which he may disbelieve, and by an engine which he may hope to escape.

Mr. Justice Bailey observes, in the same case, that it is not an indictable offence to set spring guns: perhaps not. It is not an indictable offence to go about with a loaded pistol, intending to shoot any

body who grins at you ; but, if you do it, you are hanged : many inchoate acts are innocent, the consummation of which is a capital offence.

This is not a case where the motto applies of *Volenti non fit injuria*. The man does not will to be hurt, but he wills to get the game ; and, with that rash confidence natural to many characters, believes he shall avoid the evil and gain the good. On the contrary, it is a case which exactly arranges itself under the maxim, *Quando aliquid prohibetur ex directo, prohibetur et per obliquum*. Give what notice he may, the proprietor cannot lawfully shoot a trespasser (who neither runs nor resists) with a loaded pistol ; — he cannot do it *ex directo* ; — how then can he do it *per obliquum*, by arranging on the ground the pistol which commits the murder ?

Mr. Justice Best delivers the following opinion. His Lordship concluded as follows :—

‘ This case has been discussed at the bar, as if these engines were exclusively resorted to for the protection of game ; but I consider them as lawfully applicable to the protection of every species of property against unlawful trespassers. But if even they might not lawfully be used for the protection of game, I, for one, should be extremely glad to adopt such means, if they were found sufficient for that purpose ; because I think it a great object that gentlemen should have a temptation to reside in the country, amongst their neighbours and tenantry, whose interests must be materially advanced by such a circumstance. The links of society are thereby better preserved, and the mutual advantage and dependence of the higher and lower classes of society, existing between each other, more beneficially maintained. We have seen, in a neighbouring country, the baneful consequences of the non-residence of the landed gentry ; and in an ingenious work, lately published by a foreigner, we learn the fatal effects of a like system on the Continent. By preserving game, gentle-

men are tempted to reside in the country ; and, considering that the diversion of the field is the only one of which they can partake on their estates, I am of opinion that, for the purpose I have stated, it is of essential importance that this species of property should be inviolably protected.'

If this speech of Mr. Justice Best is correctly reported, it follows, that a man may put his fellow-creatures to death for any infringement of his property — for picking the sloes and blackberries off his hedges — for breaking a few dead sticks out of them by night or by day — with resistance or without resistance — with warning or without warning ; — a strange method this of keeping up the links of society, and maintaining the dependence of the lower upon the higher classes. It certainly is of importance that gentlemen should reside on their estates in the country ; but not that gentlemen with such opinions as these should reside. The more they are absent from the country, the less strain will there be upon those links to which the learned judge alludes — the more firm that dependence upon which he places so just a value. In the case of *Dean versus Clayton, Bart.*, the Court of Common Pleas were equally divided upon the lawfulness of killing a dog coursing an hare by means of a concealed dog-spear. We confess that we cannot see the least difference between transfixing with a spear, or placing a spear so that it will transfix ; and, therefore, if *Vere versus Lord Cawdor and King* is good law, the action could have been maintained in *Dean versus Clayton* ; but the solemn consideration concerning the life of the pointer is highly creditable to all the judges. They none of them say that it is lawful to put a trespassing pointer to death under any circumstances, or that they themselves would be glad to do it ; they all

seem duly impressed with the recollection that they are deciding the fate of an animal faithfully ministerial to the pleasures of the upper classes of society : there is an awful desire to do their duty, and a dread of any rash and intemperate decision. Seriously speaking, we can hardly believe this report of Mr. Justice Best's speech to be correct ; yet we take it from a book which guides the practice of nine tenths of all the magistrates of England. Does a judge, — a cool, calm man, in whose hands are the issues of life and death — from whom so many miserable trembling human beings await their destiny — does he tell us, and tell us in a court of justice, that he places such little value on the life of man, that he himself would plot the destruction of his fellow-creatures for the preservation of a few hares and partridges? 'Nothing which falls from me' (says Mr. Justice Bailey) 'shall have a tendency to encourage the practice.' — 'I consider them' (says Mr. Justice Best) 'as lawfully applicable to the protection of every species of property ; but, even if they might not lawfully be used for the protection of game, *I for one should be extremely glad to adopt them*, if they were found sufficient for that purpose.' Can any man doubt to which of these two magistrates he would rather entrust a decision on his life, his liberty, and his possessions ? We should be very sorry to misrepresent Mr. Justice Best, and will give to his disavowal of such sentiments, if he does disavow them, all the publicity in our power ; but we have cited his very words conscientiously and correctly, as they are given in the Law Report. We have no doubt he meant to do his duty : we blame not his motives, but his feelings and his reasoning.

Let it be observed that, in the whole of this case,

we have put every circumstance in favour of the murderer. We have supposed it to be in the night-time ; but a man may be shot in the day* by a spring gun. We have supposed the deceased to be a poacher ; but he may be a very innocent man, who has missed his way — an unfortunate botanist, or a lover. We have supposed notice ; but it is a very possible event that the dead man may have been utterly ignorant of the notice. This instrument, so highly approved of by Mr. Justice Best — this knitter together of the different orders of society — is levelled promiscuously against the guilty or the innocent, the ignorant and the informed. No man who sets such an infernal machine, believes that it can reason or discriminate ; it is made to murder all alike, and it does murder all alike.

Blackstone says, that the law of England, like that of every other well regulated community, is tender of the public peace, and careful of the lives of the subjects ; ‘ that it will not suffer with impunity any crime to be prevented by death, *unless the same, if committed, would also be punished by death.*’ (Vol. iv. *Commentaries*, 182.) ‘ The law sets so high a value upon the life of a man, that it always intends some misbehaviour in the person who takes it away, unless by the command, or express permission of the law.’ — ‘ And as to the necessity which excuses a man who kills another *se defendendo*, Lord Bacon calls even that *necessitas culpabilis.*’ (*Commentaries*, vol. iv. p. 187.) So far this Luminary of the law. — But the very amusements of the rich are, in the estimation of Mr.

* Large damages have been given for wounds inflicted by spring guns set in a garden in the day-time, where the party wounded had no notice.

Justice Best, of so great importance, that the poor are to be exposed to sudden death who interfere with them. There are other persons of the same opinion with this magistrate respecting the pleasures of the rich. In the last Session of Parliament a bill was passed, entitled ‘An act for the summary punishment, in certain cases, of persons wilfully or maliciously damaging, or committing trespasses on public or private property.’ *Anno primo* — (a bad specimen of what is to happen) — *Georgii IV. Regis*, cap. 56. In this act it is provided, that ‘if any person shall wilfully, or maliciously, commit any damage, injury, or spoil, upon any building, fence, hedge, gate, stile, guidepost, milestone, tree, wood, underwood, orchard, garden, nursery-ground, crops, vegetables, plants, land, or other matter or thing growing or being therein, or to or upon real or personal property of any nature or kind soever, he may be immediately seized by any body, without a warrant, taken before a magistrate, and fined (according to the mischief he has done) to the extent of 5*l.* ; or, in default of payment, may be committed to the jail for three months.’ And at the end comes a clause, exempting from the operation of this act *all mischief done in hunting, and by shooters who are qualified*. This is surely the most impudent piece of legislation that ever crept into the statute-book ; and, coupled with Mr. Justice Best’s declaration, constitutes the following affectionate relation between the different orders of society. Says the higher link to the lower, ‘If you meddle with my game, I will immediately murder you ;—if you commit the slightest injury upon my real or personal property, I will take you before a magistrate, and fine you five pounds. I am in Parliament, and you are not ; and I have just brought

in an act of Parliament for that purpose. But so important is it to you that my pleasures should not be interrupted, that I have exempted myself and friends from the operation of this act ; and we claim the right (without allowing you any such summary remedy) of riding over your fences, hedges, gates, stiles, guide-posts, milestones, woods, underwoods, orchards, gardens, nursery-grounds, crops, vegetables, plants, lands, or other matters or things growing or being thereupon—including your children and yourselves, if you do not get out of the way.’ Is there, upon earth, such a mockery of justice as an act of Parliament, pretending to protect property, sending a poor hedge-breaker to jail, and specially exempting from its operation the accusing and the judging squire, who, at the tail of the hounds, have that morning, perhaps, ruined as much wheat and seeds as would purchase fuel a whole year for a whole village ?

It cannot be urged, in extenuation of such a murder as we have described, that the artificer of death had no particular malice against the deceased ; that his object was general, and his indignation levelled against offenders in the aggregate. Every body knows that there is a malice by implication of law.

‘ In general, any formal design of doing mischief may be called malice ; and therefore, not such killing only as proceeds from premeditated hatred and revenge against the person killed, but also, in many other cases, such as is accompanied with those circumstances that show the heart to be perversely wicked is adjudged to be of malice prepense.’
2 Haw. c. 31.

‘ For, where the law makes use of the term, malice aforethought, as descriptive of the crime of murder,

it is not to be understood in that narrow restrained sense in which the modern use of the word *malice* is apt to lead one, a principle of malevolence to particulars ; for the law, by the term malice, *malitia*, in this instance, meaneth, that the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked heart, regardless of social duty, and fatally bent upon mischief.' — *Fost.* 256, 257.

Ferocity is the natural weapon of the common people. If gentlemen of education and property contend with them at this sort of warfare, they will probably be defeated in the end. If spring guns are generally set—if the common people are murdered by them, and the Legislature does not interfere, the posts of gamekeeper and lord of the manor will soon be posts of honour and danger. The greatest curse under heaven (witness Ireland) is a peasantry demoralised by the barbarity and injustice of their rulers.

It is expected by some persons, that the severe operation of these engines will put an end to the trade of a poacher. This has always been predicated of every fresh operation of severity, that it was to put an end to poaching. But if this argument is good for one thing, it is good for another. Let the first pickpocket who is taken be hung alive by the ribs, and let him be a fortnight in wasting to death. Let us seize a little grammar boy, who is robbing orchards, tie his arms and legs, throw over him a delicate puff-paste, and bake him in a bun-pan in an oven. If poaching can be extirpated by intensity of punishment, why not all other crimes ? If racks and gibbets and tenter-hooks are the best method of bringing back the golden age, why do we refrain from so easy a receipt for abolishing every species of

wickedness? The best way of answering a bad argument is not to stop it, but to let it go on in its course till it leaps over the boundaries of common sense. There is a little book called *Beccaria on Crimes and Punishments*, which we strongly recommend to the attention of Mr. Justice Best. He who has not read it, is neither fit to make laws, nor to administer them when made.

As to the idea of abolishing poaching altogether, we will believe that poaching is abolished when it is found impossible to buy game; or when they have risen so greatly in price, that none but people of fortune can buy them. But we are convinced this never can, and never will happen. All the traps and guns in the world will never prevent the wealth of the merchant and manufacturer from commanding the game of the landed gentleman. You may, in the pursuit of this visionary purpose, render the common people savage, ferocious, and vindictive; you may disgrace your laws by enormous punishments, and the national character by these new secret assassinations; but you will never separate the wealthy glutton from his pheasant. The best way is, to take what you want, and to sell the rest fairly and openly. This is the real spring gun and steel trap which will annihilate, not the unlawful trader, but the unlawful trade.

There is a sort of horror in thinking of a whole land filled with lurking engines of death—machinations against human life under every green tree—traps and guns in every dusky dell and bosky bourn—the *feræ naturâ*, the lords of manors eyeing their peasantry as so many butts and marks, and panting to hear the click of the trap, and to see the flash of the gun. How any human being, educated in liberal

knowledge and Christian feeling, can doom to certain destruction a poor wretch, tempted by the sight of animals that naturally appear to him to belong to one person as well as another, we are at a loss to conceive. We cannot imagine how he could live in the same village, and see the widow and orphans of the man whose blood he had shed for such a trifle. We consider a person who could do this, to be deficient in the very elements of morals—to want that sacred regard to human life which is one of the corner stones of civil society. If he sacrifices the life of man for his mere pleasures, he would do so, if he dared, for the lowest and least of his passions. He may be defended, perhaps, by the abominable injustice of the Game Laws—though we think and hope he is not. But there rests upon his head, and there is marked in his account, the deep and indelible sin of *blood-guiltiness*.

PRISONS. (E. REVIEW, 1821.)

1. *Thoughts on the Criminal Prisons of this Country, occasioned by the Bill now in the House of Commons, for Consolidating and Amending the Laws relating to Prisons; with some Remarks on the Practice of looking to the Task-Master of the Prison rather than to the Chaplain for the Reformation of Offenders; and of purchasing the Work of those whom the Law has condemned to Hard Labour as a Punishment, by allowing them to spend a Portion of their Earnings during their Imprisonment.* By George Holford, Esq. M.P. Rivington. 1821.
2. *Gurney on Prisons.* Constable and Co. 1819.
3. *Report of Society for Bettering the Condition of Prisons.* Bensley, 1820.

THERE are, in every county in England, large public schools, maintained at the expense of the county, for the encouragement of profligacy and vice, and for providing a proper succession of housebreakers, profligates, and thieves. They are schools, too, conducted without the smallest degree of partiality or favour; there being no man (however mean his birth, or obscure his situation,) who may not easily procure admission to them. The moment any young person evinces the slightest propensity for these pursuits, he is provided with food, clothing, and lodging, and put to his studies under the most accomplished thieves and cut-throats the county can supply. There is not, to be sure, a formal arrangement of lectures, after the manner of our Universities; but the petty larcenous stripling, being left destitute of every species of employment, and locked up with accomplished villains

as idle as himself, listens to their pleasant narrative of successful crimes, and pants for the hour of freedom, that he may begin the same bold and interesting career.

This is a perfectly true picture of the prison establishments of many counties in England, and was so, till very lately, of almost all ; and the effects so completely answered the design, that, in the year 1818*, there were committed to the jails of the United Kingdoms more than one hundred and seven thousand persons ! * a number supposed to be greater than that of all the commitments in the other kingdoms of Europe put together.

The bodily treatment of prisoners has been greatly improved since the time of Howard. There is still, however, much to do ; and the attention of good and humane people has been lately called to their state of moral discipline.

It is inconceivable to what a spirit of party this has given birth ; — all the fat and sleek people, — the enjoyers, — the mumpsimus, and ‘well as we are’ people, are perfectly outrageous at being compelled to do their duty ; and to sacrifice time and money to the lower orders of mankind. Their first resource was, to deny all the facts which were brought forward for the purposes of amendment ; and the alderman’s sarcasm of the Turkey carpet in jails was bandied from one hard-hearted and fat-witted gentleman to another : but the advocates of prison-improvement are men in earnest — not playing at religion, but of deep feeling, and of indefatigable industry in charitable pursuits. Mr. Buxton went in company with men of the most irreproachable veracity ; and found, in the heart of the metropolis, and in a prison of

* Report of Prison Society, xiv.

which the very Turkey carpet alderman was an official visitor, scenes of horror, filth, and cruelty, which would have disgraced even the interior of a slave-ship.

This dislike of innovation proceeds sometimes from the disgust excited by false humanity, canting hypocrisy, and silly enthusiasm. It proceeds also from a stupid and indiscriminate horror of change, whether of evil for good, or good for evil. There is also much party spirit in these matters. A good deal of these humane projects and institutions originate from Dissenters. The plunderers of the public, the jobbers, and those who sell themselves to some great man, who sells himself to a greater, all scent, from afar, the danger of political change — are sensible that the correction of one abuse may lead to that of another — feel uneasy at any visible operation of public spirit and justice — hate and tremble at a man who exposes and rectifies abuses from a sense of duty — and think, if such things are suffered to be, that their candle-ends and cheese-parings are no longer safe : and these sagacious persons, it must be said for them, are not very wrong in this feeling. Providence, which has denied to them all that is great and good, has given them a fine tact for the preservation of their plunder : their real enemy is the spirit of inquiry — the dislike of wrong — the love of right — and the courage and diligence which are the concomitants of these virtues. When once this spirit is up, it may be as well directed to one abuse as another. To say you must not torture a prisoner with bad air and bad food, and to say you must not tax me without my consent, or that of my representative, are both emanations of the same principle, occurring to the same sort of understanding, congenial to the same disposition, published, protected, and enforced by the same qualities. This it is that really excites the horror against Mrs. Fry,

Mr. Gurney, Mr. Bennet, and Mr. Buxton. Alarmists such as we have described have no particular wish that prisons should be dirty, jailors cruel, or prisoners wretched; they care little about such matters either way; but all their malice and meanness is called up into action when they see secrets brought to light, and abuses giving way before the diffusion of intelligence, and the aroused feelings of justice and compassion. As for us, we have neither love of change, nor fear of it; but a love of what is just and wise, as far as we are able to find it out. In this spirit we shall offer a few observations upon prisons, and upon the publications before us.

The new law should keep up the distinction between Jails and Houses of Correction. One of each should exist in every county, either at a distance from each other, or in such a state of juxtaposition that they might be under the same governor. To the jail should be committed all persons accused of capital offences, whose trials would come on at the Assizes; to the house of correction, all offenders whose cases would be cognizable at the Quarter-sessions. Sentence of imprisonment in the house of correction, after trial, should carry with it hard labour; sentence of imprisonment in the jail, after trial, should imply an exemption from compulsory labour. There should be no compulsory labour in jails—only in houses of correction. In using the terms *Jail* and House of Correction, we shall always attend to these distinctions. Prisoners for trial should not only not be compelled to labour, but they should have every indulgence shown to them compatible with safety. No chains—much better diet than they commonly have—all possible access to their friends and relations—and means of earning money if they choose it. The

broad and obvious distinction between prisoners before and after trial should constantly be attended to; to violate it is gross tyranny and cruelty.

The jails for men and women should be so far separated, that nothing could be seen or heard from one to the other. The men should be divided into two classes: 1st, those who are not yet tried; 2d, those who are tried and convicted. The first class should be divided into those who are accused as misdemeanants and as felons; and each of these into first misdemeanants and second misdemeanants, men of better and worse character; and the same with felons. The second class should be divided into, 1st, persons condemned to death; 2d, persons condemned for transportation; 3dly, first class of confined, or men of the best character under sentence of confinement; 4thly, second *confined*, or men of worse character under sentence of confinement. To these are to be added separate places for king's evidence, boys, lunatics, and places for the first reception of prisoners, before they can be examined and classed:—a chapel, hospital, yards, and workshops for such as are willing to work.

The classifications in jails will then be as follows:—

Men before Trial.

1st Misdemeanants.

2d Ditto.

1st Felons.

2d Ditto.

Men after Trial.

Sentenced to death.

Ditto transportation.

1st Confined.

2d Confined.

Other Divisions in a Jail.

King's Evidence.

Criminal Lunatics.

Boys.

Prisoners on their first reception.

And the same divisions for Women.

But there is a division still more important than any of these ; and that is, a division into much smaller numbers than are gathered together in prisons :—40, 50, and even 70 and 80 felons, are often placed together in one yard, and live together for months previous to their trial. Any classification of offences, while there is such a multitude living together of one class, is perfectly nugatory and ridiculous ; no character can escape from corruption and extreme vice in such a school. The law ought to be peremptory against the confinement of more than fifteen persons together of the same class. Unless some measure of this kind is resorted to, all reformation in prisons is impossible.*

A very great, and a very neglected object in prisons, is Diet. There should be, in every jail and house of correction, four sorts of diet ; *1st*, Bread and water ; *2dly*, Common prison diet, to be settled by the magistrates ; *3dly*, Best prison diet, to be settled by ditto ; *4thly*, Free diet, from which spirituous liquors altogether, and fermented liquors in excess, are excluded. All prisoners, before trial, should be allowed best prison diet, and be upon free diet, if they could afford it. Every sentence for imprisonment should expressly mention to which diet the prisoner is confined ; and no other diet should be, on any account, allowed to such prisoner after his sentence. Nothing can be so preposterous, and criminally careless, as the way in which persons confined upon sentence are suffered to live in prisons. Misdemeanants, who have money in their pockets, may

* We should much prefer solitary imprisonment ; but are at present speaking of the regulations in jails where that system is excluded.

be seen in many of our prisons with fish, buttered veal, rump steaks, and every kind of luxury; and as the practice prevails of allowing them to purchase a pint of ale each, the rich prisoner purchases many pints of ale in the name of his poorer brethren, and drinks them himself. A jail should be a place of punishment, from which men recoil with horror—a place of real suffering, painful to the memory, terrible to the imagination; but if men can live idly, and live luxuriously, in a clean, well-aired, well-warmed, spacious habitation, is it any wonder that they set the law at defiance, and brave that magistrate who restores them to their former luxury and ease? There are a set of men well known to jailors, called *Family-men*, who are constantly returning to jail, and who may be said to spend the greater part of their life there,—up to the time when they are hanged.

Minutes of Evidence taken before Select Committee on Gaols.

‘MR. WILLIAM BEEBY, *Keeper of the New Clerkenwell Prison*. — Have you many prisoners that return to you on re-commitment? A vast number; some of them are frequently discharged in the morning, and I have them back again in the evening; or they have been discharged in the evening, and I have had them back again in the morning.’ — *Evidence before the Committee of the House of Commons in 1819*, p. 278.

‘FRANCIS CONST, Esq. *Chairman of the Middlesex Quarter-sessions*. — Has that opinion been confirmed by any conduct you have observed in prisoners that have come before you for trial? I only judge from the opposite thing, that, going into a place where they can be idle, and well protected from any inconveniences of the weather, and other things that poverty is open to, they are not amended at all; they laugh at it frequently, and desire to go to the House of Correction. Once or twice, in the early part of the winter, upon sending a prisoner for two months, he has asked whether he could not stay

longer, or words to that effect. It is an insulting way of saying they like it.' — *Evidence before the Committee of the House of Commons in 1819*, p. 285.

The fact is, that a thief is a very dainty gentleman. *Male parva cito dilabuntur*. He does not rob to lead a life of mortification and self-denial. The difficulty of controlling his appetites, in all probability, first led him to expenses which made him a thief to support them. Having lost character, and become desperate, he orders crab and lobster and veal cutlets at a public house, while a poor labourer is refreshing himself with bread and cheese. The most vulnerable part of a thief is his belly; and there is nothing he feels more bitterly in confinement than a long course of water-gruel and flour-puddings. It is a mere mockery of punishment to say, that such a man shall spend his money in luxurious viands, and sit down to dinner with fetters on his feet, and fried pork in his stomach.

Restriction to diet in prisons is still more necessary, when it is remembered that it is impossible to avoid making a prison, in some respects, more eligible than the home of a culprit. It is almost always more spacious, cleaner, better ventilated, better warmed. All these advantages are inevitable on the side of the prison. The means, therefore, that remain of making a prison a disagreeable place, are not to be neglected; and of these, none are more powerful than the regulation of diet. If this is neglected, the meaning of sentencing a man to prison will be this — and it had better be put in these words —

‘Prisoner at the Bar, you are fairly convicted, by a jury of your country, of having feloniously stolen two pigs, the property of Stephen Muck, farmer. The Court having taken into consideration the fre-

quency and enormity of this offence, and the necessity of restraining it with the utmost severity of punishment, do order and adjudge that you be confined for six months in a house larger, better, better aired, and warmer than your own, in company with 20 or 30 young persons in as good health and spirits as yourself. You need do no work ; and you may have any thing for breakfast, dinner, and supper, you can buy. In passing this sentence, the Court hope that your example will be a warning to others ; and that evil-disposed persons will perceive, from your suffering, that the laws of their country are not to be broken with impunity.'

As the diet, according to our plan, is always to be a part of the sentence, a Judge will, of course, consider the nature of the offence for which the prisoner is committed, as well as the quality of the prisoner : And we have before stated, that all prisoners, before trial, should be upon the best prison diet, and unrestricted as to what they could purchase, always avoiding intemperance.

These gradations of diet being fixed in all prisons, and these definitions of Jail and House of Correction being adhered to, the punishment of imprisonment may be apportioned with the greatest nicety, either by the statute, or at the discretion of the Judge, if the law chooses to give him that discretion. There will be —

Imprisonment for different degrees of time.

Imprisonment solitary, or in company, or in darkness.

In jails without labour.

In houses of correction with labour.

Imprisonment with diet on bread and water.

Imprisonment with common prison diet.

Imprisonment with best prison diet.

Imprisonment with free diet.

Every sentence of the Judge should state diet, as well as light or darkness, time, place, solitude, society, labour or ease; and we are strongly of opinion, that the punishment in prisons should be sharp and short. We would, in most cases, give as much of solitary confinement as would not injure men's minds, and as much of bread and water diet as would not injure their bodies. A return to prison should be contemplated with horror — horror, not excited by the ancient filth, disease, and extortion of jails; but by calm, well-regulated, well-watched austerity — by the gloom and sadness wisely and intentionally thrown over such an abode. Six weeks of such sort of imprisonment would be much more efficacious than as many months of jolly company and veal cutlets.

It appears, by The Times newspaper of the 24th of June, 1821, that two persons, a man and his wife, were committed at the Surrey Sessions for three years. If this county jail is bad, to three years of idleness and good living — if it is a manufacturing jail, to three years of regular labour, moderate living, and accumulated gains. They are committed *principally* for a warning to others, partly for their own good. Would not these ends have been much more effectually answered, if they had been committed, for nine months, to solitary cells upon bread and water; the first and last month in dark cells? If this is too severe, then lessen the duration still more, and give them more light days, and fewer dark ones; but we are convinced the whole good sought may be better obtained in much shorter periods than are now resorted to.

For the purpose of making jails disagreeable, the

prisoners should remain perfectly alone all night, if it is not thought proper to render their confinement entirely solitary during the whole period of their imprisonment. Prisoners dislike this — and *therefore* it should be done ; it would make their residence in jails more disagreeable, and render them unwilling to return there. At present, eight or ten women sleep in a room with a good fire, pass the night in sound sleep or pleasant conversation ; and this is called confinement in a prison. A prison is a place where men, after trial and sentence, should be made unhappy by public lawful enactments, not so severe as to injure the soundness of mind or body. If this is not done, prisons are a mere invitation to the lower classes to wade, through felony and larceny, to better accommodations than they can procure at home. And here, as it appears to us, is the mistake of the many excellent men who busy themselves (and wisely and humanely busy themselves) about prisons. Their first object seems to be the reformation of the prisoners, not the reformation of the public ; whereas the first object should be, the discomfort and discontent of their prisoners ; that they should become a warning, feel unhappy, and resolve never to act so again as to put themselves in the same predicament ; and then as much reformation as is compatible with this the better. If a man says to himself, this prison is a comfortable place, while he says to the chaplain or the visitor that he will come there no more, we confess we have no great confidence in his public declaration ; but if he says, ‘this is a place of misery and sorrow, you shall not catch me here again,’ there is much reason to believe he will be as good as his word ; and he then becomes (which is of much more consequence than his own reformation) a warning to

others. Hence it is we object to that spectacle of order and decorum — carpenters in one shop, tailors in another, weavers in a third, sitting down to a meal by ring of bell, and receiving a regular portion of their earnings. We are afraid it is better than real life on the other side of the wall, or so very little worse that nobody will have any fear to encounter it. In Bury jail, which is considered as a pattern jail, the prisoners under sentence of confinement are allowed to spend their weekly earnings (two, three, and four shillings per week) in fish, tobacco, and vegetables; so states the jailer in his examination before the House of Commons — and we have no doubt it is well meant; but is it punishment? We were most struck, in reading the evidence of the Jail Committee before the House of Commons, with the opinions of the jailer of the Devizes jail, and with the practice of the Magistrates who superintend it.*

‘ Mr. T. BRUTTON, *Governor of the Gaol at Devizes.* — Does this confinement in solitude make prisoners more averse to return to prison? I think it does. — Does it make a strong impression upon them? I have no doubt of it. — Does it make them more obedient and orderly while in jail? I have no doubt it does. — Do you consider it the most effectual punishment you can make use of? I do. — Do you think it has a greater effect upon the minds of prisoners than any apprehensions of personal punishment? I have no doubt of it. — Have you any dark cells for the punishment of refractory prisoners? I have. — Do you find it necessary occasionally to use them? Very seldom. — Have you, in any instance, been obliged to use the dark cell, in the case of the same prisoner, twice? Only on one occasion, I think. —

* The Winchester and Devizes jails seem to us to be conducted upon better principles than any other, though even these are by no means what jails should be.

What length of time is it necessary to confine a refractory prisoner to bring him to his senses? Less than one day. — Do you think it essential, for the purpose of keeping up the discipline of the prison, that you should have it in your power to have recourse to the punishment of dark cells? I do; I consider punishment in a dark cell for one day, has a greater effect upon a prisoner than to keep him on bread and water for a month.' — *Evidence before the Committee of the House of Commons in 1819*, p. 359.

The evidence of the Governor of Gloucester jail is to the same effect.

' Mr. THOMAS CUNNINGHAM, *Keeper of Gloucester Gaol*. — Do you attribute the want of those certificates entirely to the neglect of enforcing the means of solitary confinement? I do most certainly. Sometimes, where a certificate has not been granted, and a prisoner has brought a certificate of good behaviour for one year, Sir George and the Committee ordered one pound or a guinea from the charity. — Does that arise from your apprehension that the prisoners have not been equally reformed, or only from the want of the means of ascertaining such reformation? It is for want of not knowing; and we cannot ascertain it, from their working in numbers. — They may be reformed? Yes, but we have not the means of ascertaining it. There is one thing I do which is not provided by the rules, and which is the only thing in which I deviate from the rules. When a man is committed for a month, I never give him any work; he sits in solitude, and walks in the yard by himself for air; he has no other food but his bread and water, except twice a week a pint of peas soup. I never knew an instance of a man coming in a second time, who had been committed for a month. I have done that for these seventeen or eighteen years. — What has been the result? They dread so much coming in again. If a man is committed for six weeks, we give him work. — Do you apprehend that solitary confinement for a month, without employment, is the most beneficial means of working reform? I conceive it is. — Can it operate as the means of reform, any more than it operates as a system of punishment? It is only

for small offences they commit for a month. — Would not the same effect be produced by corporal punishment? Corporal punishment may be absolutely necessary sometimes; but I do not think corporal punishment would reform them so much as solitary confinement. — Would not severe corporal punishment have the same effect? No, it would harden them more than any thing else. — Do you think benefit is derived from the opportunity of reflection afforded by solitary confinement? Yes. — And very low diet also? Yes.' — *Evidence before the Committee of the House of Commons in 1819, p. 391.*

We must quote also the evidence of the Governor of Horsley jail.

'Mr. WILLIAM STOKES, *Governor of the House of Correction at Horsley.* — Do you observe any difference in the conduct of prisoners who are employed, and those who have no employment? Yes, a good deal; I look upon it, from what judgment I can form, and I have been a long while in it, that to take a prisoner and discipline him according to the rules as the law allows, and if he have no work, that that man goes through more punishment in one month, than a man who is employed and receives a portion of his labour three months; but still I should like to have employment, because a great number of times I took men away, who have been in the habit of earning sixpence a week to buy a loaf, and put them in solitary confinement; and the punishment is a great deal more without work. — Which of the prisoners, those that have been employed, or those unemployed, do you think would go out of the prison the better men? I think, that let me have a prisoner, and I never treat any one with severity, any further than that they should be obedient, and to let them see that I will do my duty, I have reason to believe, that, if a prisoner is committed under my care, or any other man's care, to a house of correction, and he has to go under the discipline of the law, if he is in for the value of a month or six weeks, that man is in a great deal better state than though he stays for six months; he gets hardened by being in so long, from one month to another. — You are speaking now of solitude without labour; do you think he would go out better,

if he had been employed during the month you speak of? No, nor half; because I never task those people, in order that they should not say I force them to do more than they are able, that they should not slight it; for, if they perform any thing in the bounds of reason, I never find fault with them: The prisoner who is employed, his time passes smooth and comfortable, and he has a proportion of his earnings, and he can buy additional diet; but if he has no labour, and kept under the discipline of the prison, it is a tight piece of punishment to go through.—Which of the two should you think most likely to return immediately to habits of labour on their own account? The dispositions of all men are not alike; but my opinion is this, if they are kept and disciplined according to the rules of the prison, and have no labour, that one month will do more than six; I am certain, that a man who is kept there without labour once, will not be very ready to come there again.’—*Evidence before the Committee of the House of Commons*, pp. 398-9.

Mr. Gurney and Mr. Buxton both lay a great stress upon the quiet and content of prisoners, upon their subordination and the absence of all plans of escape; but, where the happiness of prisoners is so much consulted, we should be much more apprehensive of a conspiracy to break into, than to break out of, prison. The mob outside may, indeed, envy the wicked ones within; but the felon who has left, perhaps, a scolding wife, a battered cottage, and six starving children, has no disposition to escape from regularity, sufficient food, employment which saves him money, warmth, ventilation, cleanliness, and civil treatment. These symptoms, upon which these respectable and excellent men lay so much stress, are by no means proofs to us that prisons are placed upon the best possible footing.

The Governor of Bury jail, as well as Mr. Gurney, insist much upon the few prisoners who return to the

jail a second time, the manufacturing skill which they acquire there, and the complete reformation of manners, for which the prisoner has afterwards thanked him the governor. But this is not the real criterion of the excellence of a jail, nor the principal reason why jails were instituted. The great point is, not the average recurrence of the same prisoners; but the paucity, or frequency of commitments, upon the whole. You may make a jail such an admirable place of education, that it may cease to be infamous to go there. Mr. Holford tells us (and a very curious anecdote it is), that parents actually accuse their children falsely of crimes, in order to get them into the Philanthropic Charity! and that it is consequently a rule with the Governors of that Charity never to receive a child upon the accusation of the parents alone. But it is quite obvious what the next step will be, if the parents cannot get their children in by fibbing. They will take good care that the child is *really* qualified for the Philanthropic, by impelling him to those crimes which are the passport to so good an education.

‘ If, on the contrary, the offender is to be punished simply by being placed in a prison, where he is to be well lodged, well clothed, and well fed, to be instructed in reading and writing, to receive a moral and religious education, and to be brought up to a trade; and if this prison is to be within the reach of the parents, so that they may occasionally visit their child, and have the satisfaction of knowing, from time to time, that all these advantages are conferred upon him, and that he is exposed to no hardships, although the confinement and the discipline of the prison may be irksome to the boy; yet the parents may be apt to congratulate themselves on having got him off their hands into so good a birth, and may be considered by other parents as having drawn a prize in the lottery

of human life by their son's conviction. This reasoning is not theoretical, but is founded in some degree upon experience. Those who have been in the habit of attending the Committee of the Philanthropic Society know, that parents have often accused their children of crimes falsely, or have exaggerated their real offences, for the sake of inducing that Society to take them; and so frequent has been this practice, that it is a rule with those who manage that Institution, never to receive an object upon the representation of its parents, unless supported by other strong testimony.' — *Holford*, pp. 44-5.

It is quite obvious that, if men were to appear again, six months after they were hanged, handsomer, richer, and more plump than before execution, the gallows would cease to be an object of terror. But here are men who come out of jail, and say, 'Look at us, — we can read and write, we can make baskets and shoes, and we went in ignorant of every thing: and we have learnt to do without strong liquors, and have no longer any objection to work; and we did work in the jail, and have saved money, and here it is.' What is there of terror and detriment in all this? and how are crimes to be lessened if they are thus rewarded? Of schools there cannot be too many. Penitentiaries, in the hands of wise men, may be rendered excellent institutions; but a prison must be a prison—a place of sorrow and wailing; which should be entered with horror, and quitted with earnest resolution never to return to such misery; with that deep impression, in short, of the evil, which breaks out into perpetual warning and exhortation to others. This great point effected, all other reformation must do the greatest good.

There are some very sensible observations upon this point in Mr. Holford's book, who upon the whole

has, we think, best treated the subject of prisons, and best understands them.

‘ In former times, men were deterred from pursuing the road that led to a prison, by the apprehension of encountering there disease and hunger, of being loaded with heavy irons, and of remaining without clothes to cover them, or a bed to lie on ; we have done no more than what justice required in relieving the inmates of a prison from these hardships ; but there is no reason that they should be freed from the fear of all other sufferings and privations. And I hope that those whose duty it is to take up the consideration of these subjects, will see, that in Penitentiaries, offenders should be subjected to separate confinement, accompanied by such work as may be found consistent with that system of imprisonment ; that in Gaols or Houses of Correction, they should perform that kind of labour which the law has enjoined ; and that, in prisons of both descriptions, instead of being allowed to cater for themselves, they should be sustained by such food as the rules and regulations of the establishment should have provided for them ; in short, that prisons should be considered as places of punishment, and not as scenes of cheerful industry, where a compromise must be made with the prisoner’s appetites to make him do the common work of a journeyman or manufacturer, and the labours of the spinning-wheel and the loom must be alleviated by indulgence.’ *

* ‘ That I am guilty of no exaggeration in thus describing a prison conducted upon the principles now coming into fashion, will be evident to any person who will turn to the latter part of the article, “ Penitentiary, Millbank,” in Mr. Buxton’s Book on Prisons. He there states what passed in conversation between himself and the Governor of Bury gaol, (which gaol, by the by, he praises as one of the three best prisons he has ever seen, and strongly recommends to our imitation at Millbank). Having observed, that the Governor of Bury gaol had mentioned his having counted 34 spinning-wheels in full activity when he left that gaol at 5 o’clock in the morning on the preceding day, Mr. Buxton proceeds as follows — “ After he had seen the Millbank Penitentiary, I asked him what would be the consequence, if the regulations there

This is good sound sense ; and it is a pity that it is preceded by the usual nonsense about '*the tide of blasphemy and sedition.*' If Mr. Holford is an observer of tides and currents, whence comes it that he observes only those which set one way? Whence comes it that he says nothing of the tides of canting and hypocrisy, which are flowing with such rapidity?—of abject political baseness and sycophancy—of the disposition, so prevalent among Englishmen, to sell their conscience and their country to the Marquis

used were adopted by him?" "The consequence would be," he replied, "that every wheel would be stopped." Mr. Buxton then adds, "I would not be considered as supposing that the prisoners will altogether refuse to work at Millbank—they will work during the stated hours ; but the present incentive being wanting, the labour will, I apprehend, be languid and desultory." I shall not, on my part, undertake to say that they will do as much work as will be done in those prisons in which work is the primary object ; but, besides the encouragement of the portion of earnings laid up for them, they know that diligence is among the qualities that will recommend them to the mercy of the Crown, and that the want of it is, by the rules and regulations of the prison, an offence to be punished. The Governor of Bury gaol, who is a very intelligent man, must have spoken hastily, in his eagerness to support his own system, and did not, I conceive, give himself credit for as much power and authority in his prison as he really possesses. It is not to be wondered at, that the keepers of prisons should like the new system : there is less trouble in the care of a manufactory than in that of a gaol ; but I am surprised to find that so much reliance is placed in argument on the declaration of some of these officers, that the prisoners are quieter where their work is encouraged, by allowing them to spend a portion of their earnings. It may naturally be expected, that offenders will be least discontented, and consequently least turbulent, where their punishment is lightest, or where, to use Mr. Buxton's own words, "by making labour productive of comfort or convenience, you do much towards rendering it agreeable ;" but I must be permitted to doubt, whether these are the prisons of which men will live in most dread.—*Holford*, pp. 78–80.

of Londonderry for a living for the second son — or a silk gown for the nephew — or for a frigate for my brother the captain? How comes our loyal carcerist to forget all these sorts of tides?

There is a great confusion, as the law now stands, in the government of jails. The Justices are empowered, by several statutes, to make subordinate regulations for the government of the jails; and the Sheriff supersedes those regulations. Their respective jurisdictions and powers should be clearly arranged.

The female prisoners should be under the care of a Matron, with proper assistants. Where this is not the case, the female part of the prison is often a mere brothel for the turnkeys. Can any thing be so repugnant to all ideas of reformation, as a male turnkey visiting a solitary female prisoner? Surely, women can take care of women as effectually as men can take care of men; or, at least, women can do so properly, assisted by men. This want of a matron is a very scandalous and immoral neglect in any prison system.

The presence of female visitors, and instructors for the women, is so obviously advantageous and proper, that the offer of forming such an institution must be gladly and thankfully received by any body of magistrates. That they should feel any jealousy of such interference, is too absurd a supposition to be made or agreed upon. Such interference may not effect all that zealous people suppose it will effect; but, if it does any good, it had better be.

Irons should never be put upon prisoners before trial; after trial, we cannot object to the humiliation and disgrace which irons and a particoloured prison dress occasion. Let them be a part of solitary confinement, and let the words ‘Solitary Confinement,’

in the sentence, imply permission to use them. The judge then knows what he inflicts.

We object to the office of Prison Inspector, for reasons so very obvious, that it is scarcely necessary to enumerate them. The prison inspector would, of course, have a good salary; that, in England, is never omitted. It is equally matter of course that he would be taken from among Treasury retainers; and that he never would look at a prison. Every sort of attention should be paid to the religious instruction of these unhappy people; but the poor chaplain should be paid a little better; — every possible duty is expected from him — and he has one hundred per annum.

Whatever money is given to prisoners, should be lodged with the governor for their benefit, to be applied as the visiting magistrates point out — no other donations should be allowed or accepted.

If voluntary work before trial, or compulsory work after trial, is the system of a prison, there should be a task-master; and it should be remembered, that the principal object is not profit.

Wardsmen, selected in each yard among the best of the prisoners, are very serviceable. If prisoners work, they should work in silence. At all times, the restrictions upon seeing friends should be very severe; and no food should be sent from friends.

Our general system then is — that a prison should be a place of real punishment; but of known, enacted, measureable, and measured punishment. A prisoner (not for assault, or refusing to pay parish dues, but a bad felonious prisoner), should pass a part of his three months in complete darkness; the rest in complete solitude, perhaps in complete idleness, (for solitary idleness leads to repentance, idleness in company to

vice). He should be exempted from cold, be kept perfectly clean, have sufficient food to prevent hunger or illness, wear the prison dress and moderate irons, have no communication with any body but the officers of the prison and the magistrates, and remain otherwise in the most perfect solitude. We strongly suspect this is the way in which a bad man is to be made afraid of prisons ; nor do we think that he would be less inclined to receive moral and religious instruction, than any one of seven or eight carpenters in jail, working at a common bench, receiving a part of their earnings, and allowed to purchase with them the delicacies of the season. If this system is not resorted to the next best system is severe work, ordinary diet, no indulgences, and as much seclusion and solitude as are compatible with work ; —always remarking, that perfect sanity of mind and body are to be preserved.

To this system of severity in jails there is but one objection. The present duration of punishments was calculated for prisons conducted upon very different principles ; —and if the discipline of prisons was rendered more strict, we are not sure that the duration of imprisonment would be practically shortened ; and the punishments would then be quite atrocious and disproportioned. There is a very great disposition, both in Judges and Magistrates, to increase the duration of imprisonment ; and, if that is done, it will be dreadful cruelty to increase the bitterness as well as the time. We should think, for instance, six months solitary imprisonment to be a punishment of dreadful severity ; but we find, from the House of Commons' Report, that prisoners are sometimes committed by county Magistrates for two years* of soli-

* House of Commons' Report, 355.

tary confinement. And so it may be doubted, whether it is not better to wrap up the rod in flannel, and make it a plaything, as it really now is, than to show how it may be wielded with effectual severity. For the pupil, instead of giving one or two stripes, will whip his patient to death. But if this abuse were guarded against, the real way to improve would be, now we have made prisons healthy and airy, to make them odious and austere — engines of punishment, and objects of terror.

In this age of charity and of prison improvement, there is one aid to prisoners which appears to be wholly overlooked ; and that is, the means of regulating their defence, and providing them witnesses for their trial. A man is tried for murder, or for house-breaking or robbery, without a single shilling in his pocket. The nonsensical and capricious institutions of the English law prevent him from engaging counsel to speak in his defence, if he had the wealth of Croesus ; but he has no money to employ even an attorney, or to procure a single witness, or to take out a subpoena. The Judge, we are told, is his counsel ; — this is sufficiently absurd ; but it is not pretended that the Judge is his witness. He solemnly declares that he has three or four witnesses who could give a completely different colour to the transaction ; but they are sixty or seventy miles distant, working for their daily bread, and have no money for such a journey, nor for the expense of a residence of some days in an Assize town. They do not know even the time of the Assize, nor the modes of tendering their evidence if they could come. When every thing is so well marshalled against him on the opposite side, it would be singular if an innocent man, with such an absence of all means of defending himself, should

not occasionally be hanged or transported : and accordingly we believe that such things have happened.* Let any man, immediately previous to the Assizes, visit the prisoners for trial, and see the many wretches who are to answer to the most serious accusations, without one penny to defend themselves. If it appeared probable, upon inquiry, that these poor creatures had important evidence which they could not bring into Court for want of money, would it not be a wise application of compassionate funds, to give them this fair chance of establishing their innocence? It seems to us no bad *finale* of the pious labours of those who guard the poor from ill treatment during their imprisonment, to take care that they are not unjustly hanged at the expiration of the term.

* From the Clonmell Advertiser it appears, that John Brien, *alias* Captain Wheeler, was found guilty of murder at the late assizes for the county of Waterford. Previous to his execution he made the following confession.

‘ I now again most solemnly aver, in the presence of that God by whom I will soon be judged, and who sees the secrets of my heart, that only three, viz. Morgan Brien, Patrick Brien, and my unfortunate self, committed the horrible crimes of murder and burning at Ballygarron, and that the four unfortunate men who have before suffered for them, were not in the smallest degree accessory to them. I have been the cause for which they have innocently suffered death. I have contracted a debt of justice with them—and the only and least restitution I can make them, is thus publicly, solemnly, and with death before my eyes, to acquit their memory of any guilt in the crimes for which I shall deservedly suffer!!!’—*Philanthropist*, No. 6, 208.

Pereunt et imputantur.

PRISONS. (E. REVIEW, 1822.)

1. *The Third Report of the Committee of the Society for the Improvement of Prison Discipline, and for the Reformation of Juvenile Offenders.* London, 1821.
2. *Remarks upon Prison Discipline, &c. &c., in a Letter addressed to the Lord Lieutenant and Magistrates of the County of Essex.* By C. C. Western, Esq. M.P. London, 1821.

THERE never was a Society calculated, upon the whole, to do more good than the Society for the Improvement of Prison Discipline; and, hitherto, it has been conducted with equal energy and prudence. If now, or hereafter, therefore, we make any criticisms on their proceedings, these must not be ascribed to any deficiency of good will or respect. We may differ from the Society in the means—our ends, we are proud to say, are the same.

In the improvement of prisons, they consider the small number of *recommitments* as the great test of amelioration. Upon this subject we have ventured to differ from them in a late Number; and we see no reason to alter our opinion. It is a mistake, and a very serious and fundamental mistake, to suppose that the principal object in jails is the reformation of the offender. The principal object undoubtedly is, to prevent the repetition of the offence by the punishment of the offender; and, therefore, it is quite possible to conceive that the offender himself may be so kindly, gently, and agreeably led to reformation, by the efforts of good and amiable persons, that the effect of the punishment may be destroyed, at the same time that the punished may be improved. A

prison may lose its terror and discredit, though the prisoner may return from it a better scholar, a better artificer, and a better man. The real and only test, in short, of a good prison system is, the diminution of offences by the terror of the punishment. If it can be shown that, in proportion as attention and expense have been employed upon the improvement of prisons, the number of commitments has been diminished, — this indeed would be a convincing proof that such care and attention were well employed. But the very reverse is the case; the number of commitments within these last ten years having nearly doubled all over England.

The following are stated to be the committals in Norfolk county gaol. From 1796 to 1815, the number averaged about 80.

In 1816	it was	134
1817	-	142
1818	-	159
1819	-	161
1820	-	223 — <i>Report</i> , p. 57.

In Staffordshire, the commitments have gradually increased from 195 in 1815, to 443 in 1820 — though the jail has been built since Howard's time, at an expense of 30,000*l.* — *Report*, p. 67. In Wiltshire, in a prison which has cost the county 40,000*l.*, the commitments have increased from 207 in 1817, to 504 in 1821. Within this period, to the eternal scandal and disgrace of our laws, 378 persons have been committed for Game offences — constituting a sixth part of all the persons committed; — so much for what our old friend, Mr. Justice Best, would term the unspeakable advantages of country gentlemen residing upon their own property!

When the Committee was appointed in the county of Essex, in the year 1818, to take into consideration the state of the gaol and houses of correction, they found that the number of prisoners annually committed had increased, within the ten preceding years, from 559 to 1993; and there is little doubt (adds Mr. Western) of this proportion being a tolerable specimen of the whole kingdom. We are far from attributing this increase solely to the imperfection of prison discipline. Increase of population, new statutes, the extension of the breed of pheasants, landed and mercantile distress, are very operative causes. But the increase of commitments is a stronger proof against the present state of prison discipline, than the decrease of recommitments is in its favour. We may possibly have made some progress in the art of teaching him who has done wrong, to do so no more; but there is no proof that we have learnt the more important art, of deterring those from doing wrong who are doubting whether they shall do it or not, and who, of course, will be principally guided in their decision by the sufferings of those who have previously yielded to temptation.

There are some assertions in the Report of the Society, to which we can hardly give credit, — not that we have the slightest suspicion of any intentional misrepresentation, but that we believe there must be some unintentional error.

‘The Ladies’ Committees visiting Newgate and the Borough Compter, have continued to devote themselves to the improvement of the female prisoners, in a spirit worthy of their enlightened zeal and Christian charity. The beneficial effects of their exertions have been evinced by the progressive decrease in the number of female prisoners recommitted, which

has diminished, since the visits of the Ladies to Newgate, no less than 40 per cent.'

That is, that Mrs. Fry and her friends have reclaimed forty women out of every hundred, who, but for them, would have reappeared in jails. Nobody admires and respects Mrs. Fry more than we do; but this fact is scarcely credible; and, if accurate, ought, in justice to the reputation of the Society and its real interests, to have been thoroughly substantiated by names and documents. The ladies certainly lay claim to no such extraordinary success in their own Report quoted in the Appendix; but speak with becoming modesty and moderation of the result of their labours. The enemies of all these reforms accuse the reformers of enthusiasm and exaggeration. It is of the greatest possible consequence, therefore, that their statements should be correct, and their views practical; and that all strong assertions should be supported by strong documents. The English are a calm, reflecting people; they will give time and money when they are convinced; but they love dates, names, and certificates. In the midst of the most heart-rending narratives, Bull requires the day of the month, the year of our Lord, the name of the parish, and the countersign of three or four respectable householders. After these affecting circumstances, he can no longer hold out; but gives way to the kindness of his nature — puffs, blubbers, and subscribes!

A case is stated in the Hertford house of correction, which so much more resembles the sudden conversions of the Methodist Magazine, than the slow and uncertain process by which repentance is produced in real life, that we are a little surprised the Society should have inserted it.

‘ Two notorious poachers, as well as bad men, were committed for three months, for not paying the penalty after conviction, but who, in consequence of extreme contrition and good conduct, were, at the intercession of the clergyman of their parish, released before the expiration of their term of punishment. Upon leaving the House of Correction, they declared that they had been completely brought to their senses — spoke with gratitude of the benefit they had derived from the advice of the chaplain, and promised, upon their return to their parish, that they would go to their minister, express their thanks for his interceding for them ; and moreover that they would, for the future, attend their duty regularly at church. It is pleasing to add, that these promises have been faithfully fulfilled.’—*App. to Third Report*, pp. 29, 30.

Such statements prove nothing, but that the clergyman who makes them is an amiable man, and probably a college tutor. Their introduction, however, in the Report of a Society depending upon public opinion for success, is very detrimental.

It is not fair to state the recommitments of one prison, and compare them with those of another, perhaps very differently circumstanced, — the recommitments, for instance, of a county jail, where offences are generally of serious magnitude, with those of a borough, where the most trifling faults are punished. The important thing would be, to give a table of recommitments, in the same prison, for a series of years, — the average of recommitments, for example, every five years in each prison for twenty years past. If the Society can obtain this, it will be a document of some importance, (though of less perhaps than they would consider it to be). At present they tell us, that the average of recommitments in certain prisons is 3 per cent. : in certain other prisons 5 per cent. : but what were they twenty years ago in the same

prison? — what were they five years ago? If recommitments are to be the test, we must know whether these are becoming, *in any given prison*, more or less frequent, before we can determine whether that prison is better or worse governed than formerly. Recommitments will of course be more numerous where prisoners are received from large towns, and from the resorts of soldiers and sailors; because, it is in these situations that we may expect the most hardened offenders. The different nature of the two soils which grow the crimes, must be considered before the produce gathered into prisons can be justly compared.

The quadruple column of the state of prisons for each year, is a very useful and important document; and we hope, in time, the Society will give us a general and particular table of commitments and recommitments carried back for twenty or thirty years; so that the table may contain (of Gloucester jail, for instance), 1st, the greatest number it can contain; 2dly, the greatest number it did contain at any one period in each year; 3dly, its classification; 4thly, the greatest number committed in any given year; 5thly, four averages of five years each, taken from the twenty years preceding, and stating the greatest number of commitments; 6thly, the greatest number of recommitments in the year under view; and four averages of recommitments, made in the same manner as the average of the commitments; and then totals at the bottom of the columns. Tables so constructed would throw great light upon the nature and efficacy of imprisonment.

We wish the Society would pay a little more attention to the question of solitary imprisonment, both in darkness and in light; and to the extent to which it

may be carried. Mr. Western has upon this subject some ingenious ideas.

‘ It appears to me, that, if relieved from these impediments, and likewise from any idea of the necessity of making the labour of prisoners profitable, the detail of corrective prison discipline would not be difficult for any body to chalk out. I would first premise, that the only punishment for refractory conduct, or any misbehaviour in the gaol, should, in my opinion, be solitary confinement; and that, instead of being in a dark hole, it should be in some part of the house where they could fully see the light of day; and I am not sure that it might not be desirable in some cases, if possible, that they should see the surrounding country and moving objects at a distance, and every thing that man delights in, removed at the same time from any intercourse of word or look with any human being, and quite out of the reach of being themselves seen. I consider such confinement would be a punishment very severe, and calculated to produce a far better effect than darkness. All the feelings that are good in men would be much more likely to be kept alive; the loss of liberty, and all the blessings of life which honesty will ensure, more deeply to be felt. There would not be so much danger of any delinquent sinking into that state of sullen, insensible condition, of incorrigible obstinacy, which sometimes occurs. If he does under those circumstances, we have a right to keep him out of the way of mischief, and let him there remain. But I believe such solitary confinement as I have described, with scanty fare, would very rarely fail of its effect.’ — *Western's Remarks*, pp. 59, 60.

There is a good deal in this; it is well worth the trial; and we hope the Society will notice it in their next Report.

It is very difficult to hit upon degrees; but we cannot help thinking the Society lean too much to a system of indulgence and education in jails. We shall be very glad to see them more stern and Spartan in their discipline. They recommend work, and even

hard work ; but they do not insist upon it, that the only work done in jails by felons should be hard, dull, and uninteresting ; they do not protest against the conversion of jails into schools and manufactories. Look, for example, to ‘Preston house of correction.’

‘Preston house of correction is justly distinguished by the industry which prevails. Here an idle hand is rarely to be found. There were lately 150 looms in full employ, from each of which the average weekly earnings are 5s. About 150 pieces of cotton goods are worked off per week. A considerable proportion of the looms are of the prisoners’ own manufacture. In one month, an inexperienced workman will be able to earn the cost of his gaol allowance of food. Weaving has these advantages over other prison labour : the noise of the shuttle prevents conversation, and the progress of the work constantly requires the eye. The accounts of this prison, contained in the Appendix, deserve particular attention, as there appears to be a balance of clear profit to the county, from the labour of the prisoners, in the year, of 1398*l.* 9*s.* 1*d.* This sum was earned by weaving and cleaning cotton only, the prisoners being besides employed in tailoring, whitewashing, flagging, slating, painting, carpentering, and labourers’ work ; the earnings at which are not included in the above account.’ — *Third Report*, pp. 21, 22.

‘At Worcester county gaol, the system of employment is admirable. Every article of dress worn by the prisoners here is made from the raw material : sacking and bags are the only articles made for sale.’ — *Ib.* p. 23.

‘In many prisons, the instruction of the prisoners in reading and writing has been attended with excellent effects. Schools have been formed at Bedford, Durham, Chelmsford, Winchester, Hereford, Maidstone, Leicester House of Correction, Shrewsbury, Warwick, Worcester, &c. Much valuable assistance has been derived in this department from the labours of respectable individuals, especially females, acting under the sanction of the magistrates, and direction of the chaplain.’ — *Ib.* pp. 30, 31.

We again enter our decided protest against these

modes of occupation in prisons ; they are certainly better than mere idleness spent in society ; but they are not the kind of occupations which render prisons terrible. We would banish all the looms of Preston jail, and substitute nothing but the tread-wheel, or the capstan, or some species of labour where the labourer could not see the results of his toil, — where it was as monotonous, irksome, and dull as possible, — pulling and pushing, instead of reading and writing, — no share of the profits — not a single shilling. There should be no tea and sugar, — no assemblage of female felons round the washing-tub, — nothing but beating hemp, and pulling oakum, and pounding bricks, — no work but what was tedious, unusual, and unfeminine. Man, woman, boy and girl, should all leave the jail, unimpaired indeed in health, but heartily wearied of their residence ; and taught, by sad experience, to consider it as the greatest misfortune of their lives to return to it. We have the strongest belief that the present lenity of jails, the education carried on there — the cheerful assemblage of workmen — the indulgence in diet — the shares of earnings enjoyed by prisoners, are one great cause of the astonishingly rapid increase of commitments.

Mr. Western, who entirely agrees with us upon these points, has the following judicious observations upon the severe system.

‘ It may be imagined by some persons, that the rules here prescribed are too severe ; but such treatment is, in my opinion, the tenderest mercy, compared with that indulgence which is so much in practice, and which directly tends to ruin, instead of saving, its unfortunate victim. This severity it is which in truth forms the sole effective means which imprisonment gives ; only one mitigation therefore, if such it may be termed, can be admissible, and that is, simply to

shorten the duration of the imprisonment. The sooner the prisoner comes out the better, if fully impressed with dread of what he has suffered, and communicates information to his friends what they may expect if they get there. It appears to me, indeed, that one great and primary object we ought to have in view is, generally, to shorten the duration of imprisonment, at the same time that we make it such a punishment as is likely to deter, correct, and reform: shorten the duration of imprisonment before trial, which we are called upon, by every principle of moral and political justice to do; shorten also the duration of imprisonment after trial, by the means here described; and I am satisfied our prisons would soon lose, or rather would never see, half the number of their present inhabitants. The long duration of imprisonment, where the discipline is less severe, renders it perfectly familiar, and, in consequence, not only destitute of any useful influence, but obviously productive of the worst effects; yet this is the present practice; and, I think, indeed, criminals are now sentenced to a longer period of confinement than formerly.

‘ The deprivation of liberty certainly is a punishment under any circumstances; but the system generally pursued in our gaols might rather be considered as a palliative of that punishment, than to make it effectual to any good purpose. An idle life, society unrestrained, with associates of similar character and habits, better fare and lodgings in many cases, and in few, if any, worse than falls to the lot of the hard-working and industrious peasant; and very often much better than the prisoners were in the enjoyment of before they were apprehended.

‘ I do not know what could be devised more agreeable to all the different classes of offenders than this sort of treatment: the old hardened sinner, the juvenile offender, or the idle vagabond, who runs away and leaves a sick wife and family to be provided for by his parish, alike have little or no apprehension, at present, of any imprisonment to which they may be sentenced; and thus are the most effective means we possess to correct and reform rendered totally unavailable, and even perverted, to the more certain ruin of those who

might be restored to society good and valuable members of it.

‘ There are, it is true, various occupations now introduced into many prisons, but which, I confess, I think of very little use ; drawing and preparing straws, platting, knitting, heading pins, &c. weaving, and working at a trade even, as it is generally carried on — prisoners coaxed to the performance of it, the task easy, the reward immediate — afford rather the means of passing away the time agreeably. These occupations are indeed better than absolute idleness, notwithstanding that imprisonment may be rendered less irksome thereby. I am far from denying the advantage, still less would I be supposed to derogate from the merits of those who, with every feeling of humanity, and with indefatigable pains, in many instances, have established such means of employment ; and some of them for women, with washing, &c. amount to hard labour ; but I contend that, for men, they are applicable only to a house of industry, and by no means suited to the corrective discipline which should be found in a prison. Individuals are sent here to be punished, and for that sole purpose ; in many cases for crimes which have induced the forfeiture of life : they are not sent to be educated, or apprenticed to a trade. The horrors of dungeon imprisonment, to the credit of the age, no longer exist. But, if no cause of dread is substituted, by what indication of common sense is it that we send criminals there at all ? If prisons are to be made into places in which persons of both sexes and all ages may be well fed, clothed, lodged, educated, and taught a trade, where they may find pleasant society, and are required not to take heed for the morrow, the present inhabitants should be turned out, and the most deserving and industrious of our poorest fellow-subjects should be invited to take their place, which I have no doubt they would be eager to do.’ — *Western*, p. 13—17.

In these sentiments we most cordially agree. They are well worth the most serious attention of the Society.

The following is a sketch from Mr. Western’s book

of what a prison life should be. It is impossible to write with more good sense, and a more thorough knowledge of the subject.

‘The operations of the day should begin with the greatest punctuality at a given hour; and, as soon as the prisoners have risen from their beds, they should be, according to their several classes, marched to the workhouses, where they should be kept to hard labour two hours at least; from thence they should be taken back to wash, shave, comb, and clean themselves; thence to the chapel to hear a short prayer, or the governor or deputy should read to them in their respective day-rooms; and then their breakfast, which may, altogether, occupy an hour and a half or more. I have stated, in a former part of my letter, that the hours of meals and leisure should be in solitude, in the sleeping cells of the prison; but I presume, for the moment, this may not always be practicable. I will therefore consider the case as if the classes assembled at meal-times in the different day-rooms. After breakfast they should return to hard labour for three or four hours, and then take another hour for dinner: labour after dinner two or three hours, and their supper given them to eat in solitude in their sleeping cells.

‘This marching backwards and forwards to chapel and mill-house, &c. may appear objectionable, but it has not been so represented to me in the prisons where it actually now takes place; and it is, to my apprehension, materially useful in many respects. The object is to keep the prisoners in a state of constant motion, so that there shall be no lounging time or loitering, which is always favourable to mischief or cabal. For the same reason it is I propose two hours’ labour the moment they are up, and before washing, &c. that there may be no time lost, and that they may begin the day by a portion of labour, which will tend to keep them quiet and obedient the remainder of it. Each interval for meal, thus occurring between labour hours, has also a tendency to render the mischief of intercourse less probable, and at the same time the evening association, which is most to be apprehended in this respect, is entirely cut off. The frequent moving of

the prisoners from place to place keeps the governor and sub-officers of the prison in a similar state of activity and attention, which is likewise of advantage, though their numbers should be such as to prevent their duty becoming too arduous or irksome. Their situation is not pleasant, and their responsibility is great. An able and attentive governor, who executes all his arduous duties with unremitting zeal and fidelity, is a most valuable public servant, and entitled to the greatest respect. He must be a man of no ordinary capacity, with a liberal and comprehensive mind, possessing a control over his own passions, firm and undaunted, a character that commands from those under him, instinctively, as it were, respect and regard. In vain are our buildings, and rules, and regulations, if the choice of a governor is not made an object of primary and most solicitous attention and consideration.

‘It does not appear to me necessary for the prisoners to have more than three hours’ leisure, inclusive of meal-times; and I am convinced the close of the day must be in solitude. Eight or ten hours will have passed in company with their fellow-prisoners of the same class (for I am presuming that a separate compartment of the workhouse will be allotted to each) where, though they cannot associate to enjoy society as they would wish, no gloom of solitude can oppress them: there is more danger even then of too close an intercourse and conversation, though a ready cure is in that case to be found by a wheel put in motion, the noise of which speedily overcomes the voice. Some time after Saturday night should be allowed to them, more particularly to cleanse themselves and their clothes, and they should have a bath, cold or warm, if necessary; and on the Sunday they should be dressed in their best clothes, and the day should be spent wholly in the chapel, the cell, and the airing-ground; the latter in presence of a day-watchman, as I have described to be in practice at Warwick. I say nothing about teaching to read, write, work, &c. &c.; any proportion of time necessary for any useful purpose may be spared from the hours of labour or of rest, according to circumstances; but I do not place any reliance upon improvement in any branch of education: they would not, indeed, be there long enough. All I

want them to learn is, that there exists the means of punishment for crime, and be fully impressed with dread of repetition of what they have undergone; and a short time will suffice for that purpose. Now, if each successive day was spent in this manner, can it be doubted that the frequent commission of crime would be checked, and more done to deter, correct, and reform, than could be accomplished by any other punishment? A period of such discipline, longer or shorter, according to the nature of the offence, would surely be sufficient for any violation of the law short of murder, or that description of outrage which is likely to lead on to the perpetration of it. This sort of treatment is not to be overcome: it cannot be braved, or laughed at, or disregarded, by any force of animal spirits, however strong or vigorous of mind or body the individual may be. The dull, unvarying course of hard labour, with hard fare and seclusion, must in time become so painfully irksome, and so wear and distress him, that he will inevitably, in the end, be subdued.' — *Western*, p. 64—69.

There is nothing in the Report of the Prison Society so good as this.

The Society very properly observe upon the badness of town jails, and the necessity for their suppression. Most towns cannot spare the funds necessary for building a good jail. Shopkeepers cannot spare the time for its superintendence; and hence it happens that town jails are almost always in a disgraceful state. The Society frequently allude to the diffusion of tracts. If education is to be continued in jails, and tracts are to be dispersed, we cannot help lamenting that the tracts, though full of good principles, are so intolerably stupid—and all apparently constructed upon the supposition, that a thief or a peccant ploughman are inferior in common sense to a boy of five years old. The story generally is, that a labourer with six children has nothing to live upon but mouldy

bread and dirty water ; yet nothing can exceed his cheerfulness and content—no murmurs—no discontent : of mutton he has scarcely heard—of bacon he never dreams : furfurous bread and the water of the pool constitute his food, establish his felicity, and excite his warmest gratitude. The squire or parson of the parish always happen to be walking by, and overhear him praying for the king and the members for the county, and for all in authority ; and it generally ends with their offering him a shilling, which this excellent man declares he does not want, and will not accept ! These are the pamphlets which Goodies and Noodles are dispersing with unwearied diligence. It would be a great blessing if some genius would arise who had a talent of writing for the poor. He would be of more value than many poets living upon the banks of lakes—or even (though we think highly of ourselves) of greater value than many reviewing men dwelling in the garrets of the north.

The Society offer some comments upon the prison bill now pending, and which, unfortunately* for the cause of prison improvement, has been so long pending in the legislature. In the copy of this bill, as it stands at present, nothing is said of the limitation of numbers in any particular class. We have seen forty felons of one class in one yard before trial. If this is to continue, all prison improvement is a mere mockery. Separate sleeping cells should be enacted positively, and not in words, which leave this improvement optional. If any visiting justice dissents

* The county of York, with a prison under presentment, has been waiting nearly three years for this bill, in order to proceed upon the improvement of their county jail.

from the majority *, it should be lawful for him to give in a separate report upon the state of the prison and prisoners to the judge or the quarter-sessions. All such reports of any visiting magistrate or magistrates, not exceeding a certain length, should be published in the county papers. The chairman's report to the secretary of state should be published in the same manner. The great panacea is publicity : it is this which secures compliance with wise and just laws, more than all the penalties they contain for their own preservation.

We object to the reading and writing clause. A poor man, who is lucky enough to have his son committed for a felony, educates him, under such a system, for nothing ; while the virtuous simpleton on the other side of the wall is paying by the quarter for these attainments. He sees clergymen and ladies busy with the larcenous pupil ; while the poor lad, who respects the eighth commandment, is consigned, in some dark alley, to the frowns and blows of a ragged pedagogue. It would be the safest way, where a prisoner is kept upon bread and water alone, to enact that the allowance of bread should not be less than a pound and a half for men, and a pound for women and boys. We strongly recommend, as mentioned in a previous number, that four sorts of diet should be enacted for every prison : 1st, Bread and water ; 2d, Better prison diet ; 3d, Best prison diet ; 4th, Free diet—the second and third to be defined by the visiting magistrates. All sentences of imprisonment should state to which of these diets the prisoner is to

* It would be an entertaining change in human affairs to determine every thing by *minorities*. They are almost always in the right.

be confined ; and all deviation from it on the part of the prison officers should be punished with very severe penalties. The regulation of diet in a prison is a point of the very highest importance ; and to ask of visiting magistrates that they should doom to bread and water a prisoner, whom the law has left at liberty to purchase whatever he has money to procure, is a degree of severity which it is hardly fair to expect from country gentlemen ; and, if expected, those expectations will not be fulfilled. The whole system of diet, one of the mainsprings of all prison discipline, will get out of order, if its arrangement is left to the interference of magistrates, and not to the sentence of the judge. Free diet and bread diet need no interpretation ; and the jailer will take care to furnish the judge with the definitions of better prison diet and best prison diet. A knowledge of the diet prescribed in a jail is absolutely necessary for the justice of the case. Diet differs so much in different prisons, that six weeks in one prison is as severe a punishment as three months in another. If any country gentleman, engaged in legislation for prisons, is inclined to undervalue the importance of these regulations, let him appeal to his own experience, and remember, in the vacuity of the country, how often he thinks of dinner, and of what there will be for dinner ; and how much his amenity and courtesy for the evening depend upon the successful execution of this meal. But there is nobody so gluttonous and sensual as a thief ; and he will feel much more bitterly fetters on his mouth than his heels. It sometimes happens that a gentleman is sentenced to imprisonment, for manslaughter in a duel, or for a libel. Are visiting justices to doom such a prisoner to bread and water, or are *they* to make an invidious distinction between

him and the other prisoners? The diet should be ordered by the judge, or it never will be well ordered — or ordered at all.

The most extraordinary clause in the bill is the following: —

‘ And be it further enacted, that in case any criminal prisoner shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of *any greater offence* which the jailer or keeper is not by this act empowered to punish, the said jailer or keeper shall report the same to the visiting justices, or one of them, for the time being; and such justices, or one of them, shall have power to inquire upon oath, and determine concerning any such offence so reported to him or them, and shall order the offender to be punished, either by moderate whipping, repeated whippings, or by close confinement, for any term not exceeding .’ — *Act*, p. 21.

Upon this clause, any one justice may order repeated whippings for any offence greater than that which the jailer may punish. Our respect for the committee will only allow us to say, that we hope this clause will be reconsidered. We beg leave to add, that there should be a return to the principal secretary of state of recommitments as well as commitments.

It is no mean pleasure to see this attention to jail-discipline travelling from England to the detestable and despotic governments of the Continent, — to see the health and life of captives admitted to be of any importance, — to perceive that human creatures in dungeons are of more consequence than rats and black beetles. All this is new — is some little gained upon tyranny; and for it we are indebted to the labours of the Prison Society. Still the state of prisons, on

many parts of the Continent, is shocking beyond all description.

It is a most inconceivable piece of cruelty and absurdity in the English law, that the prisoner's counsel, when he is tried for any capital felony, is not allowed to speak for him; and this we hope the new prison bill will correct. Nothing can be more ridiculous in point of reasoning, or more atrociously cruel and unjust in point of fact. Any number of counsel may be employed to take away the poor man's life. They are at full liberty to talk as long as they like; but not a syllable is to be uttered in his defence—not a sentence to show why the prisoner is not to be hung. This practice is so utterly ridiculous to any body but lawyers (to whom nothing that is customary is ridiculous), that men not versant with courts of justice will not believe it. It is, indeed, so utterly inconsistent with the common cant of the humanity of the English law, that it is often considered to be the mistake of the narrator, rather than the imperfection of the system. We must take this opportunity, therefore, of making a few observations on this very strange and anomalous practice.

The common argument used in its defence is that the judge is counsel for the prisoner. But the defenders of this piece of cruel and barbarous nonsense must first make their election, whether they consider the prisoner to be, by this arrangement, in a better, a worse, or an equally good situation as if his counsel were allowed to plead for him. If he is in a *worse* situation, *why* is he so placed? Why is a man, in a solemn issue of life and death, deprived of any fair advantage which any suitor in any court of justice possesses? This is a plea of guilty to the charge we make against the practice; and its advocates, by such

concession, are put out of court. But, if it is an advantage, or no disadvantage, whence comes it that the choice of this advantage, in the greatest of all human concerns, is not left to the party, or to his friends? If the question concerns a footpath—or a fat ox—every man may tell his own story, or employ a barrister to tell it for him. The law leaves the litigant to decide on the method most conducive to his own interest. But, when the question is whether he is to live or die, it is at once decided for him that his counsel are to be dumb! And yet, so ignorant are men of their own interests, that there is not a single man tried who would not think it a great privilege if counsel were allowed to speak in his favour, and who would not be supremely happy to lay aside the fancied advantage of their silence. And this is true not merely of ignorant men; but there is not an Old Bailey barrister who would not rather employ another Old Bailey barrister to speak for him, than enjoy the advantage (as the phrase is) of having the judge for his counsel. But in what sense, after all, is the judge counsel for the prisoner? He states, in his summing up, facts as they have been delivered in evidence; and he tells the jury upon what points they are to decide: he mentions what facts are in favour of the prisoner, and what bear against him; and he leaves the decision to the jury. Does he do more than this in favour of the prisoner? Does he misstate? does he mislead? does he bring forward arguments on one side of the question, and omit equally important arguments on the other? If so, he is indeed counsel for the prisoner; but then who is judge? who takes care of the interests of the public? But the truth is, he does no such thing; he does merely what we have stated him to do; and would he do

less, *could* he do less, if the prisoner's counsel spoke for him? If an argument was just, or an inference legitimate, he would not omit the one, or refute the other, because they had been put or drawn in the speech of the prisoner's counsel. He would be no more prejudiced against the defendant in a criminal than in a civil suit. He would select from the speeches of both counsel all that could be *fairly* urged for or against the defendant, and he would reply to their fallacious reasonings. The pure administration of justice requires of him, in either case, the same conduct. Whether the whole bar spoke for the prisoner, or whether he was left to defend himself, what can the judge do, or what ought he to do, but to state to the jury the facts as they are given in evidence, and the impression these facts have made upon his own mind? In the mean time, while the prisoner's counsel have been compelled to be silent, the accuser's, the opposite party, have enjoyed an immense advantage. In considering what bears against the prisoner, the judge has heard, not only the suggestions of his own understanding, but he has been exposed to the able and artful reasoning of a practised advocate, who has been previously instructed in the case of which the judge never heard a syllable before he came into court. Suppose it to be a case depending upon circumstantial evidence; in how many new points of view may a man of genius have placed those circumstances, which would not have occurred to the judge himself! How many inferences may he have drawn, which would have been unnoticed, but for the efforts of a man whose bread and fame depend upon his exertions, and who has purposely, and on contract, flung the whole force of his understanding into one scale! In the mean time, the prisoner can say

nothing, for he has not the gift of learned speech ; his counsel can say nothing, though he has communicated with the prisoner, and could place the whole circumstances, perhaps, in the fairest and clearest point of view for the accused party. By the courtesy of England this is called *justice* — we in the north cannot admit of the correctness of the appellation.

It seems utterly to be forgotten, in estimating this practice, that two understandings are better than one. The judge must inevitably receive many new views against the prisoner by the speech of one counsel, and lose many views in favour of the prisoner by the silence of the other. We are not to suppose (like ladies going into court in an assize town) that the judge would have thought of every thing which the counsel against the prisoner has said, and which the counsel for the prisoner would have said. The judge, wigged and robed as he is, is often very inferior in acuteness to either of the persons who are pleading under him — a cold, slow, parchment and precedent man, without passions or præcordia, — perhaps a sturdy brawler for church and king, — or a quiet man of ordinary abilities, steadily, though perhaps conscientiously, following those in power through thick and thin — through right and wrong. Whence comes it that the method of getting at truth, which is so excellent on all common occasions, should be considered as so improper on the greatest of all occasions, where the life of a man is concerned ? If an acre of land is to be lost or won, one man says all that can be said on one side of the question — another on the other ; and the jury, aided by the impartiality of the judge, decide. The wit of man can devise no better method of disentangling difficulty, exposing falsehood, and detecting truth. ‘ *Tell me why I am hurried*

away to a premature death, and no man suffered to speak in my defence, when at this very moment, and in my hearing, all the eloquence of the bar, on the other side of your justice-hall, is employed in defending a path or a hedge? Is a foot of land dearer to any man than my life is to me? The civil plaintiff has not trusted the smallest part of his fate or fortune to his own efforts; and will you grant me no assistance of superior wisdom, who have suffered a long famine to purchase it — who am broken by prison — broken by chains — and so shamed by this dress of guilt, and abashed by the presence of my superiors, that I have no words which you could hear without derision — that I could not give way for a moment to the fulness and agitation of my rude heart without moving your contempt?’ So spoke a wretched creature to a judge in our hearing! and what answer could be given, but ‘Jailer, take him away?’

We are well aware that a great decency of language is observed by the counsel employed against the prisoner, in consequence of the silence imposed upon the opposite counsel; but then, though there is a decency, as far as concerns impassioned declamation, yet there is no restraint, and there can be no restraint, upon the reasoning powers of a counsellor. He may put together the circumstances of an imputed crime in the most able, artful, and ingenious manner, without the slightest vehemence or passion. We have no objection to this, if any counter statement were permitted. We want only fair play. Speech for both sides, or speech for none. The first would be the wiser system; but the second would be clear from the intolerable cruelty of the present. We see no harm that would ensue, if both advocates were to

follow their own plan without restraint. But, if the feelings are to be excluded in all causes of this nature (which seems very absurd), then let the same restraint be exacted from both sides. It might very soon be established, as the etiquette of the bar, that the pleadings on both sides were expected to be calm, and to consist of reasoning upon the facts. In high treason, where the partiality of the judge and power of the court are suspected, this absurd incapacity of being heard by counsel is removed. Nobody pretends to say, in such cases, that the judge would be counsel for the prisoner; and yet, how many thousand cases are there in a free country which have nothing to do with high treason, and where the spirit of party, unknown to himself, may get possession of a judge? Suppose any trial for murder to have taken place in the Manchester riots, — will any man say that the conduct of many judges on such a question ought not to have been watched with the most jealous circumspection? Would any prisoner — would any fair mediator between the prisoner and the public — be satisfied at such a period with the axiom that the judge is counsel for the prisoner? We are not saying that there is no judge who might not be so trusted, but that all judges are not, at all times, to be so intrusted. We are not saying that any judge would wilfully do wrong; but that many might be led to do wrong by passions and prejudices of which they were unconscious; and that the real safeguard to the prisoner, the best, the only safeguard, is full liberty of speech for the counsel he has employed.

What would be the discipline of that hospital, where medical assistance was allowed in all trifling complaints, and withheld in every case of real danger? where Bailey and Halford were lavished upon

stomach-aches and refused in typhus fever? where the dying patient beheld the greatest skill employed upon trifling evils of others, and was told, because his was a case of life and death, that the cook or the nurse was to be his physician?

Suppose so intolerable an abuse (as the attorney and solicitor-general would term it) had been established, and that a law for its correction was now first proposed, entitled an *Act to prevent the Counsel for Prisoners from being heard in their Defence* !!!

What evil would result from allowing counsel to be heard in defence of prisoners? Would too many people be hung from losing that valuable counsellor, the judge? or would too few people be hung? or would things remain much as they are at present? We never could get the admirers of this practice to inform us what the results would be of deviating from it; and we are the more particularly curious upon this point, because *our* practice is decidedly the reverse, and we find no other results from it than a fair administration of criminal justice. In all criminal cases that require the intervention of a jury in Scotland, a prisoner must have a copy of the indictment, which must contain a minute specification of the offence charged; 2dly, a list of witnesses; 3d, a list of the assize; and, 4th, in every question that occurs, and in all addresses to the jury, the prisoner's counsel has the last word. Where is the boasted mercy of the English law after this?

The truth is, it proceeds from the error which, in all dark ages, pervades all codes of laws, of confounding the accused with the guilty. In the early part of our state trials, the prisoners were not allowed to bring evidence against the witnesses of the crown. For a long period after this, the witnesses of the pri-

soner were not suffered to be examined upon oath. One piece of cruelty and folly has given way after another. Each has been defended by the Attorney and Solicitor General for the time, as absolutely necessary to the existence of the state, and the most perfect performance of our illustrious ancestors. The last grand hope of every foolish person is the silence of the prisoner's counsel. In the defence of this, it will be seen what stupidity driven to despair can achieve. We beg pardon for this digression; but flesh and blood cannot endure the nonsense of lawyers upon this subject.

The Society have some very proper remarks upon the religious instructions of the chaplain — an appointment of vast importance and utility; unfortunately very ill paid, and devolving entirely upon the lower clergy. It is said that the present Bishop of Gloucester, Dr. Ryder, goes into gaols, and busies himself with the temporal wretchedness and the eternal welfare of the prisoners. If this is so, it does him great honour, and is a noble example to all ranks of clergy who are subject to him. Above all, do not let us omit the following beautiful anecdote, while we are talking of good and pious men.

‘The Committee cannot refrain from extracting from the Report of the Paris Society, the interesting anecdote of the excellent Père Joussony, who being sent, by the Consul at Algiers, to minister to the slaves, fixed his residence in their prison; and, during a period of thirty years, never quitted his post. Being compelled to repair to France, for a short period, he returned again to the prison, and at length resigned his breath in the midst of those for whose interests he had laboured, and who were dearer to him than life.’ — *Report*, p. 30.

It seems to be a very necessary part of the prison

system, that any poor person, when acquitted, should be passed to his parish; and that all who are acquitted should be *immediately* liberated.* At present, a prisoner, after acquittal, is not liberated till the Grand Jury are dismissed, in case (as it is said) any more bills should be preferred against him. This is really a considerable hardship; and we do not see, upon the same principle, why the prisoner may not be detained for another assize. To justify such a practice, notice should, at all events, be given to the gaoler of intention to prefer other charges against him. To detain a man who is acquitted of all of which he has been accused, and who is accused of nothing more, merely because he *may be accused of something more*, seems to be a great perversion of justice. The greatest of all prison improvements, however, would be, the delivery of gaols four times in the year. It would save expense; render justice more terrible, by rendering it more prompt; facilitate classification, by lessening numbers; keep constantly alive, in the minds of wicked men, the dread of the law; and diminish the unjust sufferings of those who, after long imprisonment, are found innocent.

‘From documents,’ says Mr. Western, ‘upon the table of the House of Commons in 1819, I drew out an account, which I have already adverted to in part, but which I shall restate here, as it places, in a strong point of view, the extent of injustice, and inconsistency too, arising out of the present system. It appeared, that at the Maidstone Lent Assizes of that year there were one hundred and seventy-seven prisoners for trial; of these, seventeen were in prison before the 1st of October, eighty-three before the 1st of January, the shortest period of confinement before trial being six months of the former, three months of the latter. Nothing can show us more plainly the injustice of such confinement, than

* This has since been done away with.

the known fact of six months' imprisonment being considered a sufficient punishment for half the felonies that are committed; but the case is stronger, when we consider the number acquitted; seventeen of the twenty-seven first mentioned were acquitted, nine of the seventeen were discharged, not being prosecuted, or having no bill found against them. On the other side it appeared, that twenty-five convicted felons were sentenced to six months' imprisonment, or under, the longest period of whose confinement did not therefore exceed the shortest of the seventeen acquitted, or that of the nine, against whom no charge was adduced; there were three, who, after being about seven months in prison, were then discharged, whilst various convicted felons suffered six sevenths only of the punishment, including the time before trial as well as after condemnation. By the returns from the Lent Assizes at Chelmsford, the same year, the cases were not less striking than those of Maidstone; the total number was one hundred and sixty-six, of these twenty-five were in prison before the 1st of October, of whom eleven were acquitted, and of these eleven, six were discharged without any indictment preferred; two were in prison eight months; three, seven months and fifteen days; three, six months and fifteen days. On the other hand, sixteen convicted of felony, were considered to be sufficiently punished by imprisonment under six months. Upon the whole, it appeared that four hundred and five persons had been in gaol before the 1st of October, whilst eight hundred convicted felons were sentenced to a lighter punishment, to a shorter duration of imprisonment, than these four hundred and five had actually undergone.

'It is a curious fact, that, upon an average, more than one third of the total number committed for trial are acquitted. In the seven years ending 1819, seventy-two thousand two hundred and sixteen persons were committed; of these, fourteen thousand two hundred and ninety-one were acquitted on trial, eleven thousand two hundred and seventy-four were discharged, there being no prosecutions, or no bills found against them. This large proportion of acquittals aggravates the evil and injustice of long confinement before trial; but were it otherwise, what possible right can we have to detain a

man in custody six months, upon any charge exhibited against him, before he is brought to trial? What excuse or palliation can be found for so barbarous a violation of all the principles of justice and humanity? How contemptible it is, by way of defence, to talk of the inexpediency of increasing the number of the judges, the expense, inconvenience, trouble, &c. ! It is wrong to contend with such arguments against the unanswerable claims of justice, as it is only to admit they are entitled to weight. The fact is, we are so completely under the influence of habitual respect for established practice, that we do not stop to question the possibility of the existence of any serious defects in the administration of the law that can be capable of remedy. The public attention has never been earnestly and steadily fixed and devoted to the attainment of a better system.' — *Western*, pp. 80—83.

The public cannot be too grateful to Mr. Western for his labours on this subject. We strongly recommend his Tract for general circulation. It is full of stout good sense, without one particle of nonsense or fanaticism ; — good English stuff, of the most improved and best sort. Lord Londonderry has assented to the measure ; and his assent does him and the Government very great credit. It is a measure of first-rate importance. The multiplicity of imprisonments is truly awful.

Within the distance of ten miles round London, thirty-one fairs are annually held, which continue eighty days within the space of seven months. The effect of these fairs, in filling the prisons of the metropolis, it is easy to imagine ; and the topic is very wisely and properly brought forward by the Society.

Nothing can be so absurd as the reasoning used about *flash houses*. They are suffered to exist, it seems, because it is easy to the officers of justice to find, in such places, the prisoners of whom they are in search ! But the very place where the thief is found is most probably the place which made him a

thief. If it facilitates the search, it creates the necessity for searching, and multiplies guilt while it promotes detection. Wherever thieves are known to haunt, that place should be instantly purged of thieves.

We have pushed this article to a length which will prevent us from dwelling upon that part of the plan of the prison Society which embraces the reformation of juvenile delinquents, of whom, it is calculated, there are not less than 8000 in London who gain their livelihood by thieving. To this subject we may perhaps refer in some future Number. We must content ourselves at present with a glimpse at the youthful criminals of the metropolis.

‘ Upon a late occasion (in company with Mr. Samuel Hoare, the Chairman of the Society for the Reform of Juvenile Delinquents), I visited, about midnight, many of those receptacles of thieves which abound in this metropolis. We selected the night of that day in which an execution had taken place ; and our object was, to ascertain whether that terrible demonstration of rigour could operate even a short suspension of iniquity, and keep for a single night the votaries of crime from their accustomed orgies. In one room, I recollect, we found a large number of children of both sexes, the oldest under eighteen years of age, and in the centre of these a man who had been described to me by the Police as one of the largest sellers of forged Bank-notes. At another part, we were shown a number of buildings, into which only children were allowed to enter, and in which, if you could obtain admission, which you cannot, you would see scenes of the most flagrant, the most public, and the most shocking debauchery. Have I not, then, a right to say, that you are growing crimes at a terrible rate, and producing those miscreants who are to disturb the public peace, plunder the public property, and to become the scourge and the disgrace of the country ? — *Buxton*, pp. 66, 67.

Houses dedicated to the debauchery of children, where it is impossible to enter!!! Whence comes this impossibility?

To show that their labours are not needlessly continued, the Society make the following statement of the present state of prisons: —

‘ But although these considerations are highly encouraging, there is yet much to accomplish in this work of national improvement. So extensive are the defects of classification, that in thirty gaols, constructed for the confinement of 2985 persons, there were, at one time in the last year, no fewer than 5837 prisoners; and the whole number imprisoned in those gaols, during that period, amounted to 26,703. There are yet prisons where idleness and its attendant evils reign unrestrained — where the sexes are not separated — where all distinctions of crime are confounded — where few can enter, if uncorrupted, without pollution; and, if guilty, without incurring deeper stains of criminality. — There are yet prisons which receive not the pious visits of a Christian minister — which the light of knowledge never enters — and where the truths and consolations of the Gospel are never heard. — There are yet prisons where, for the security of the prisoners, measures are resorted to as revolting to British feeling as they are repugnant to the spirit and letter of English law.’ — *Report*, pp. 63, 64.

With this statement we take our leave of the subject of prisons, thoroughly convinced that, since the days of their cleanliness and salubrity, they have been so managed as to become the great school for crimes and wretchedness; and that the public, though beginning to awake, are not yet sufficiently aware of this fact, and sufficiently alarmed at it. Mrs. Fry is an amiable excellent woman, and ten thousand times better than the infamous neglect that preceded her; but hers is not the method to stop crimes. In prisons which are really meant to keep the multitude in

order, and to be a terror to evil doers, there must be no sharing of profits — no visiting of friends — no education but religious education — no freedom of diet — no weavers' looms or carpenters' benches. There must be a great deal of solitude; coarse food; a dress of shame; hard, incessant, irksome, eternal labour; a planned and regulated and unrelenting exclusion of happiness and comfort.

PERSECUTING BISHOPS. (E. REVIEW, 1822.)

1. *An Appeal to the Legislature and Public; or, the Legality of the Eighty-Seven Questions proposed by Dr. Herbert Marsh, the Bishop of Peterborough, to Candidates for Holy Orders, and for Licenses, within that Diocese, Considered.* 2d Edition. London, Seely, 1821.
2. *A Speech, delivered in the House of Lords, on Friday, June 7. 1822, by Herbert, Lord Bishop of Peterborough, on the Presentation of a Petition against his Examination Questions; with Explanatory Notes, a Supplement, and a Copy of the Questions.* London, Rivington, 1822.
3. *The Wrongs of the Clergy of the Diocese of Peterborough Stated and Illustrated.* By the Rev. T. S. Grimshawe, M.A. Rector of Burton, Northamptonshire; and Vicar of Biddenham, Bedfordshire. London, Seely, 1822.
4. *Episcopal Innovation: or, the Test of Modern Orthodoxy, in Eighty-Seven Questions, imposed, as Articles of Faith, upon Candidates for Licenses and for Holy Orders, in the Diocese of Peterborough; with a distinct Answer to each Question, and General Reflections relative to their Illegal Structure and Pernicious Tendency.* London, Seely, 1820.
5. *Official Correspondence between the Right Reverend Herbert Lord Bishop of Peterborough and the Rev. John Green, respecting his Nomination to the Curacy of Blatherwycke, in the Diocese of Peterborough, and County of Northampton: Also, between His Grace Charles Lord Archbishop of Canterbury and the Rev. Henry William Nevile, M.A. Rector of Blatherwycke, and of Cottesmore in the County of Rutland.* 1821.

It is a great point in any question to clear away encumbrances, and to make a naked circle about the object in dispute, so that there may be a clear view of it on every side. In pursuance of this disencum-

bering process, we shall first acquit the Bishop of all wrong intentions. He has a very bad opinion of the practical effects of high Calvinistic doctrines upon the common people; and he thinks it his duty to exclude those clergymen who profess them from his diocese. There is no moral wrong in this. He has accordingly devised no fewer than *eighty-seven* interrogatories, by which he thinks he can detect the smallest taint of Calvinism that may lurk in the creed of the candidate; and in this also, whatever we may think of his reasoning, we suppose his purpose to be blameless. He believes, finally, that he has legally the power so to interrogate and exclude; and in this perhaps he is not mistaken. His intentions, then, are good, and his conduct perhaps, not amenable to the law. All this we admit in his favour: but against him we must maintain, that his conduct upon the points in dispute has been singularly injudicious, extremely harsh, and, in its effects, (though not in its intentions) very oppressive and vexatious to the Clergy.

We have no sort of intention to avail ourselves of an anonymous publication to say unkind, uncivil, or disrespectful things to a man of rank, learning, and character — we hope to be guilty of no such impropriety; but we cannot believe we are doing wrong in ranging ourselves on the weaker side, in the cause of propriety and justice. The Mitre protects its wearer from indignity; but it does not secure impunity.

It is a strong presumption that a man is wrong, when all his friends, whose habits naturally lead them to coincide with him, think him wrong. If a man were to indulge in taking medicine till the apothecary, the druggist, and the physician, all called upon him to abandon his philocathartic propensities — if he

were to gratify his convivial habits till the landlord demurred and the waiter shook his head — we should naturally imagine that advice so wholly disinterested was not given before it was wanted, and that it merited some little attention and respect. Now, though the Bench of Bishops certainly love power, and love the Church, as well as the Bishop of Peterborough, yet not one defended him — not one rose to say, ‘I have done, or I would do the same thing.’ It was impossible to be present at the last debate on this question, without perceiving that his Lordship stood alone — and this in a very gregarious profession, that habitually combines and butts against an opponent with a very extended front. If a lawyer is wounded, the rest of the profession pursue him, and put him to death. If a churchman is hurt, the others gather round for his protection, stamp with their feet, push with their horns, and demolish the dissenter who did the mischief.

The Bishop has at least done a very unusual thing in his Eighty-seven Questions. The two Archbishops, and we believe every other Bishop, and all the Irish hierarchy, admit curates into their dioceses without any such precautions. The necessity of such severe and scrupulous inquisition, in short, has been apparent to nobody but the Bishop of Peterborough; and the authorities by which he seeks to justify it are any thing but satisfactory. His Lordship states, that forty years ago, he was himself examined by written interrogatories, and that he is not the only Bishop who has done it; but he mentions no names; and it was hardly worth while to state such extremely slight precedents for so strong a deviation from the common practice of the Church.

The Bishop who rejects a curate upon the Eighty-

seven Questions, is necessarily and inevitably opposed to the Bishop who ordained him. The Bishop of Gloucester ordains a young man of twenty-three years of age, not thinking it necessary to put to him these interrogatories, or putting them perhaps, and approving of answers diametrically opposite to those that are required by the Bishop of Peterborough. The young clergyman then comes to the last-mentioned Bishop; and the Bishop, after *putting him to the Question*, says, 'You are unfit for a clergyman,' — though, ten days before, the Bishop of Gloucester has made him one! It is bad enough for ladies to pull caps, but still worse for Bishops to pull mitres. Nothing can be more mischievous or indecent than such scenes; and no man of common prudence, or knowledge of the world, but must see that they ought immediately to be put a stop to. If a man is a captain in the army in one part of England, he is a captain in all. The general who commands north of the Tweed does not say, You shall never appear in my district, or exercise the functions of an officer, if you do not answer eighty-seven questions on the art of war, according to my notions. The same officer who commands a ship of the line in the Mediterranean, is considered as equal to the same office in the North Seas. The sixth commandment is suspended, by one medical diploma, from the north of England to the south. But, by this new system of interrogation, a man may be admitted into orders at Barnet, rejected at Stevenage, re-admitted at Brogden, kicked out as a Calvinist at Witham Common, and hailed as an ardent Arminian on his arrival at York.

It matters nothing to say that sacred things must not be compared with profane. In their importance, we allow, they cannot; but in their order and dis-

cipline they may be so far compared as to say, that the discrepancy and contention which would be disgraceful and pernicious in worldly affairs, should, in common prudence, be avoided in the affairs of religion. Mr. Greenough has made a map of England, according to its geological varieties ; — blue for the chalk, green for the clay, red for the sand, and so forth. Under this system of Bishop Marsh, we must petition for the assistance of the geologist in the fabrication of an ecclesiastical map. All the Arminian districts must be purple. Green for one theological extremity — sky-blue for another — as many colours as there are Bishops — as many shades of these colours as there are Archdeacons — a tailor's pattern card — the picture of vanity, fashion and caprice !

The Bishop seems surprised at the resistance he meets with ; and yet, to what purpose has he read Ecclesiastical history, if he expects to meet with any thing but the most determined opposition ? Does he think that every sturdy supralapsarian bullock whom he tries to sacrifice to the Genius of Orthodoxy, will not kick, and push, and toss ; that he will not, if he *can*, shake the axe from his neck, and hurl his mitred butcher into the air ? His Lordship has undertaken a task of which he little knows the labour or the end. We know these men fully as well as the Bishop ; he has not a chance of success against them. If one motion in Parliament will not do, they will have twenty. They will ravage, roar, and rush, till the very chaplains, and the Masters and Misses Peterborough request his Lordship to desist. He is raising up a storm in the English Church of which he has not the slightest conception ; and which will end, as it ought to end, in his Lordship's disgrace and defeat.

The longer we live, the more we are convinced of

the justice of the old saying, that an *ounce of mother wit is worth a pound of Clergy* ; that discretion, gentle manners, common sense, and good nature, are, in men of high ecclesiastical station, of far greater importance than the greatest skill in discriminating between sublapsarian and supralapsarian doctrines. Bishop Marsh should remember, that all men wearing the mitre work by character, as well as doctrine ; that a tender regard to men's rights and feelings, a desire to avoid sacred squabbles, a fondness for quiet, and an ardent wish to make every body happy, would be of far more value to the Church of England than all his learning and vigilance of inquisition. The Irish Tithes will probably fall next Session of Parliament ; the common people are regularly receding from the Church of England — baptizing, burying, and confirming for themselves. Under such circumstances, what would the worst enemy of the English Church require ? — a bitter, bustling, theological Bishop, accused by his clergy of tyranny and oppression — the cause of daily petitions and daily debates in the House of Commons — the idoneous vehicle of abuse against the Establishment — a stalking horse to bad men for the introduction of revolutionary opinions, mischievous ridicule, and irreligious feelings. Such will be the advantages which Bishop Marsh will secure for the English Establishment in the ensuing Session. It is inconceivable how such a prelate shakes all the upper works of the Church, and ripens it for dissolution and decay. Six such Bishops, multiplied by eighty-seven, and working with five hundred and twenty two questions, would fetch every thing to the ground in less than six months. But what if it pleased Divine Providence to afflict every prelate with the spirit of putting eighty-seven queries, and the two Archbishops with the

spirit of putting twice as many, and the Bishop of Sodor and Man with the spirit of putting only forty-three queries? — there would then be a grand total of two thousand three hundred and thirty-five interrogations flying about the English Church; and sorely vexed would the land be with Question and Answer.

We will suppose this learned Prelate, without meanness or undue regard to his worldly interests, to feel that fair desire of rising in his profession, which any man, in any profession, may feel without disgrace. Does he forget that his character in the ministerial circles will soon become that of a violent impracticable man — whom it is impossible to place in the highest situations — who has been trusted with too much already, and must be trusted with no more? Ministers have something else to do with their time, and with the time of Parliament, than to waste them in debating squabbles between Bishops and their Clergy. They naturally wish, and, on the whole, reasonably expect, that every thing should go on silently and quietly in the Church. They have no objection to a learned Bishop; but they deprecate one atom more of learning than is compatible with moderation, good sense, and the soundest discretion. It must be the grossest ignorance of the world to suppose, that the Cabinet has any pleasure in watching Calvinists.

The Bishop not only puts the questions, but he actually assigns the limits within which they are to be answered. Spaces are left in the paper of interrogations, to which limits the answer is to be confined; — two inches to original sin; an inch and a half to justification; three quarters to predestination; and to free will only a quarter of an inch. But if his Lordship gives them an inch they will take an ell. His

Lordship is himself a theological writer, and by no means remarkable for his conciseness. To deny space to his brother theologians, who are writing on the most difficult subjects, not from choice, but necessity; not for fame, but for bread; and to award rejection as the penalty of prolixity, does appear to us no slight deviation from Christian gentleness. The tyranny of calling for such short answers is very strikingly pointed out in a letter from Mr. Thurtell to the Bishop of Peterborough; the style of which pleads, we think, very powerfully in favour of the writer.

‘Beccles, Suffolk, August 28th, 1821.

‘My Lord,

‘I ought, in the first place, to apologise for delaying so long to answer your Lordship’s letter: but the difficulty in which I was involved, by receiving another copy of your Lordship’s Questions, with positive directions to give short answers, may be sufficient to account for that delay.

*‘It is my sincere desire to meet your Lordship’s wishes, and to obey your Lordship’s directions in every particular; and I would therefore immediately have returned answers, without any “restrictions or modifications,” to the Questions which your Lordship has thought fit to send me, if, in so doing, I could have discharged the obligations of my conscience, by showing what my opinions really are. But it appears to me, that the Questions proposed to me by your Lordship are so constructed as to elicit only two sets of opinions; and that by answering them in so concise a manner, I should be representing myself to your Lordship as one who believes in either of two particular creeds, to neither of which I do *really* subscribe. For instance, to answer Question I. chap. ii. in the manner your Lordship desires, I am reduced to the alternative of declaring, either that “mankind are a mass of *mere* corruption,” which expresses more than I intend, or of leaving room for the inference, that they are only *partially* corrupt, which is opposed to the plainest declarations of the*

Homilies ; such as these, "Man is *altogether* spotted and defiled" (Hom. on Nat.), "without a *spark* of goodness in him." (Serm. on Mis. of Man, &c.)

' Again, by answering the Questions comprised in the chapter on "Free Will," according to your Lordship's directions, I am compelled to acknowledge either that man has such a share in the work of his own salvation as to exclude the *sole* agency of God, or that he has no share whatever ; when the Homilies for Rogation Week and Whitsunday positively declare, that God is the "only Worker," or, in other words, *sole* Agent ; and at the same time assign to man a certain share in the work of his own salvation. In short, I could, with your Lordship's permission, point out twenty Questions, involving doctrines of the utmost importance, which I am unable to answer, so as to convey my real sentiments, without more room for explanation than the printed sheet affords.

' In this view of the subject, therefore, and in the most deliberate exercise of my judgment, I deem it indispensable to my acting with that candour and truth with which it is my wish and duty to act, and with which I cannot but believe your Lordship desires I should act, to state my opinions in that language which expresses them most fully, plainly, and unreservedly. This I have endeavoured to do in the answers now in the possession of your Lordship. If any further explanation be required, I am most willing to give it, even to a minuteness of opinion beyond what the Articles require. At the same time, I would humbly and respectfully appeal to your Lordship's candour, *whether it is not hard to demand my decided opinion upon points which have been the themes of volumes ; upon which the most pious and learned men of the Church have conscientiously differed ; and upon which the Articles, in the judgment of Bishop Burnet, have pronounced no definite sentence.* To those Articles, my Lord, I have already subscribed ; and I am willing again to subscribe to every one of them, "in its literal and grammatical sense," according to His Majesty's declaration prefixed to them.

' I hope, therefore, in consideration of the above statement, that your Lordship will not compel me, by the conciseness

of my answers, to assent to doctrines which I do not believe, or to expose myself to inferences which do not fairly and legitimately follow from my opinions.

‘I am, my Lord, &c. &c.’

We are not much acquainted with the practices of courts of justice; but, if we remember right, when a man is going to be hanged, the judge lets him make his defence in his own way, without complaining of its length. We should think a Christian Bishop might be equally indulgent to a man who is going to be ruined. The answers are required to be clear, concise, and correct — short, plain, and positive. In other words, a poor curate, extremely agitated at the idea of losing his livelihood, is required to write with brevity and perspicuity on the following subjects — Redemption by Jesus Christ — Original Sin — Free Will — Justification — Justification in reference to its causes — Justification in reference to the time when it takes place — Everlasting Salvation — Predestination — Regeneration on the New Birth — Renovation, and the Holy Trinity. As a specimen of these questions, the answer to which is required to be so brief and clear, we shall insert the following quotation: —

‘*Section II.—Of Justification, in reference to its cause.*

- ‘1. Does not the eleventh Article declare, that we are “justified by Faith *only*?”
- ‘2. Does not the expression “Faith only” derive additional strength from the negative expression in the same Article “and *not* for our own works?”
- ‘3. Does not therefore the eleventh Article *exclude* good works from all share in the office of Justifying? Or can we so construe the term “Faith” in that Article, as to make it *include* good works?
- ‘4. Do not the twelfth and thirteenth Articles *further* ex-

clude them, the one by asserting that good works *follow after* Justification, the other by maintaining that they *cannot precede* it?

‘5. Can that, which never precedes an effect, be reckoned among the *causes* of that effect?

‘6. Can we then, consistently with our Articles, reckon the performance of good works among the *causes* of Justification, whatever qualifying epithet be used with the term *cause*?’

We entirely deny that the Calvinistical Clergy are bad members of their profession. We maintain that as many instances of good, serious, and pious men—of persons zealously interesting themselves in the temporal and spiritual welfare of their parishioners are to be found among them, as among the Clergy who put an opposite interpretation on the Articles. The Articles of Religion are older than Arminianism, *eo nomine*. The early reformers leant to Calvinism; and would, to a man, have answered the Bishop’s questions in a way which would have induced him to refuse them ordination and curacies; and those who drew up the Thirty-nine Articles, if they had not prudently avoided all precise interpretation of their Creed on free will, necessity, absolute decrees, original sin, reprobation and election, would have, in all probability, given an interpretation of them like that which the Bishop considers as a disqualification for Holy Orders. Laud’s Lambeth Articles were illegal, mischievous, and are generally condemned. The Irish Clergy in 1641 drew up one hundred and four articles as the creed of their church; and these are Calvinistic, and not Arminian. They were approved and signed by Usher, and never abjured by him; though dropt as a test or qualification. Usher was promoted (even in the days of Arminianism) to

Bishoprics and Archbishoprics — so little did a Calvinistic interpretation of the Articles in a man's own breast, or even an avowal of Calvinism, beyond what was required by the Articles, operate even then as a disqualification for the cure of souls, or any other office in the Church. Throughout Charles II. and William III.'s time, the best men and greatest names of the Church not only allowed latitude in interpreting the Articles, but thought it would be wise to diminish their number, and render them more lax than they are ; and be it observed, that these latitudinarians leant to Arminianism rather than to high Calvinism ; and thought, consequently, that the Articles, if objectionable at all, were exposed to the censure of being 'too Calvinistic,' rather than too Arminian. How preposterous, therefore, to twist them, and the subscription to them required by law, by the machinery of a long string of explanatory questions, into a barrier against Calvinists, and to give the Arminians a monopoly in the Church !

Archbishop Wake, in 1716, after consulting all the Bishops then attending Parliament, thought it incumbent on him '*to employ the authority which the ecclesiastical laws then in force, and the custom and laws of the realm vested in him,*' in taking care that '*no unworthy person might hereafter be admitted into the sacred Ministry of the Church ;*' and he drew up twelve recommendations to the Bishops of England, in which he earnestly exhorts them not to ordain persons of bad conduct or character, or incompetent learning ; but he does not require from the candidates for Holy Orders or preferment, any explanation whatever of the Articles which they had signed.

The Correspondence of the same eminent Prelate

with Professor Turretin in 1718, and with Mr. Le Clerc, and the Pastors and Professors of Geneva in 1719, printed in London, 1782, recommends union among Protestants, and the omission of controverted points in Confessions of Faith, as a means of obtaining that union ; and a constant reference to the practice of the Church of England is made in elucidation of the charity and wisdom of such policy. Speaking of men who act upon a contrary principle he says, *O quantum potuit insana φιλαντία !*

These passages, we think, are conclusive evidence of the practice of the Church till 1719. For Wake was not only at the time Archbishop of Canterbury, but both in his circular recommendations to the Bishops of England, and in his correspondence with foreign Churches, was acting in the capacity of metropolitan of the Anglican Church. He, a man of prudence and learning, publicly boasts to Protestant Europe, that his Church does *not* exact, and that he *de facto* has never avowed, and never will, his opinions on those very points upon which Bishop Marsh obliges every poor curate to be explicit, upon pain of expulsion from the Church.

It is clear, then, the practice was, to exact subscription and nothing else, as the test of Orthodoxy — to that Wake is an evidence. As far as he is authority on a point of opinion, it is his conviction that this practice was wholesome, wise, and intended to preserve peace in the Church ; that it would be wrong at least, if not illegal, to do otherwise ; and that the observance of this forbearance is the only method of preventing schism. The Bishop of Peterborough, however, is of a different opinion ; he is so thoroughly convinced of the pernicious effects of Calvinistic doctrines, that he does what no other

Bishop does, or ever did do, for their exclusion. This may be either wise or injudicious, but it is at least zealous and bold; it is to encounter rebuke, and opposition from a sense of duty. It is impossible to deny this merit to his Lordship. And we have no doubt, that, in pursuance of the same theological gallantry, he is preparing a set of interrogatories for those Clergymen who are presented to benefices in his diocese. The patron will have his action of *Quare impedit*, it is true; and the Judge and Jury will decide whether the Bishop has the right of interrogation at all; and whether Calvinistical answers to his interrogatories disqualify any man from holding preferment in the Church of England. If either of these points are given against the Bishop of Peterborough, he is in honour and conscience bound to give up his examination of curates. If Calvinistic ministers are, in the estimation of the Bishops, so dangerous as curates, they are of course much more dangerous as rectors and vicars. He has as much right to examine one as the other. Why then does he pass over the greater danger, and guard against the less? Why does he not show his zeal when he would run some risk, and where the excluded person (if excluded unjustly) could appeal to the laws of his country? If his conduct is just and right, has he any thing to fear from that appeal? What should we say of a police officer who acted in all cases of petty larceny, where no opposition was made, and let off all persons guilty of felony who threatened to knock him down? If the Bishop values his own character, he is bound to do less,—or to do more. God send his choice may be right! The law, as it stands at present, certainly affords very unequal protection to rector and to curate; but if the bishop will not

act so as to improve the law, the law must be so changed as to improve the Bishop ; an action of *Quare impedit* must be given to the curate also—and then the fury of interrogation will be calmed.

We are aware that the Bishop of Peterborough, in his speech, disclaims the object of excluding the Calvinists by this system of interrogation. We shall take no other notice of his disavowal, than expressing our sincere regret that he ever made it ; but the question is not at all altered by the intention of the interrogator. Whether he aims at the Calvinists only or includes them with other heterodox respondents—the fact is, they *are* included in the proscription, and excluded from the Church. The practical effect of the practice being, that men are driven out of the Church who have as much right to exercise the duties of clergymen as the Bishop himself. If heterodox opinions are the great objects of the Bishop's apprehensions, he has his Ecclesiastical Courts, where regular process may bring the offender to punishment, and from whence there is an appeal to higher courts. This would be the fair thing to do. The Curate and the Bishop would be brought into the light of day, and subjected to the wholesome restraint of public opinion.

His Lordship boasts, that he has excluded only two curates. So the Emperor of Hayti boasted that he had only cut off two persons' heads for disagreeable behaviour at his table. In spite of the paucity of the visitors executed, the example operated as a considerable impediment to conversation ; and the intensity of the punishment was found to be a full compensation for its rarity. How many persons have been deprived of curacies which they might have enjoyed, but for the tenour of these interrogatories?

How many respectable Clergymen have been deprived of the assistance of curates connected with them by blood, friendship, or doctrine, and compelled to choose persons, for no other qualification than that they could pass through the eye of the Bishop's needle? Violent measures are not to be judged of merely by the number of times they have been resorted to, but by the terror, misery, and restraint which the severity is likely to have produced.

We never met with any style so entirely clear of all redundant and vicious ornament, as that which the ecclesiastical Lord of Peterborough has adopted towards his clergy. It, in fact, may all be reduced to these few words — 'Reverend Sir, I shall do what I please. Peterborough.' — Even in the House of Lords, he speaks what we must call very plain language. Among other things, he says, that the allegations of the petitions are *false*. Now, as every Bishop is, besides his other qualities, a gentleman; and as the word *false* is used only by laymen, who mean to hazard their lives by the expression; and as it cannot be supposed that foul language is ever used because it can be used with personal impunity, his Lordship must therefore be intended to mean not *false*, but *mistaken* — not a wilful deviation from truth, but an accidental and unintended departure from it.

His Lordship talks of the drudgery of wading through ten pages of answers to his eighty-seven questions. Who has occasioned this drudgery, but the person who means to be so much more active, useful, and important, than all other Bishops, by proposing questions which nobody has thought to be necessary but himself? But to be intolerably strict and harsh to a poor curate, who is trying to earn a morsel

of hard bread, and then to complain of the drudgery of reading his answers, is much like knocking a man down with a bludgeon, and then abusing him for splashing you with his blood, and pestering you with his groans. It is quite monstrous, that a man who inflicts eighty-seven new questions in Theology upon his fellow-creatures, should talk of the drudgery of reading their answers.

A Curate—there is something which excites compassion in the very name of a Curate!!! How any man of Purple, Palaces, and Preferment, can let himself loose against this poor working-man of God, we are at a loss to conceive,—a learned man in an hovel, with sermons and saucepans, lexicons and bacon, Hebrew books and ragged children—good and patient—a comforter and a preacher—the first and purest pauper of the hamlet, and yet showing, that, in the midst of his worldly misery, he has the heart of a gentleman, and the spirit of a Christian, and the kindness of a pastor; and this man, though he has exercised the duties of a clergyman for twenty years—though he has the most ample testimonies of conduct from Clergymen as respectable as any Bishop—though an Archbishop add his name to the list of witnesses, is not good enough for Bishop Marsh; but is pushed out in the street, with his wife and children, and his little furniture, to surrender his honour, his faith, his conscience, and his learning—or to starve!

An obvious objection to these innovations is, that there can be no end to them. If eighty-three questions are assumed to be necessary by one Bishop, eight hundred may be considered as the minimum of interrogation by another. When once the ancient faith marks of the Church are lost sight of and despised, any misled theologian may launch out on the boundless sea of polemical vexation.

The Bishop of Peterborough is positive, that the Arminian interpretation of the Articles is the right interpretation, and that Calvinists should be excluded from it ; but the country gentlemen who are to hear these matters debated in the Lower House, are to remember, that other Bishops have written upon these points before the Bishop of Peterborough, and have arrived at conclusions diametrically opposite. When Curates are excluded because their answers are Calvinistical, a careless layman might imagine that this interpretation of the Articles had never been heard of before in the Church — that it was a gross and palpable perversion of their sense, which had been scouted by all writers on Church matters, from the day the Articles were promulgated, to this hour — that such an unheard of monster as a Calvinistical Curate had never leapt over the pale before, and been detected browsing in the sacred pastures.

The following is the testimony of Bishop Sherlock : —

“ The Church has left a latitude of sense to prevent schisms and breaches upon every different opinion. It is evident the Church of England has so done in some Articles, which are most liable to the hottest disputes ; which yet are penned with that temper as to be willingly subscribed by men of different apprehensions in those matters.” — SHERLOCK'S *Defence of Stillingfleet's Unreasonableness of Separation.*

Bishop Cleaver, describing the difficulties attending so great an undertaking as the formation of a national creed, observes : —

“ These difficulties, however, do not seem to have discouraged the great leaders in this work from forming a design as wise as it was liberal, that of framing a confession, which, in the enumeration and method of its several articles, should meet the approbation, and engage the consent, of the whole reformed world.

“If upon trial, it was found that a comprehension so extensive could not be reduced to practice, still as large a comprehension as could be contrived, within the narrower limits of the kingdom, became, for the same reasons which first suggested the idea, at once an object of prudence and duty, in the formation and government of the English Church.”

‘After dwelling on the means necessary to accomplish this object, the Bishop proceeds to remark:—“Such evidently appears to have been the origin, and such the actual complexion of the confession comprised in the Articles of our Church; *the true scope and design of which will not, I conceive, be correctly apprehended in any other view than that of one drawn up and adjusted with an intention to comprehend the assent of all, rather than to exclude that of any who concurred in the necessity of a reformation.*

“The means of comprehension intended were, not any general ambiguity or equivocation of terms, *but a prudent forbearance in all parties not to insist on the full extent of their opinions in matters not essential or fundamental; and in all cases to wave, as much as possible, tenets which might divide, where they wish to unite.*” — Remarks on the Design and Formation of the Articles of the Church of England, by WILLIAM, Lord Bishop of Bangor, 1802.’ — pp. 23—25.

We will finish with Bishop Horsley.

‘It has been the fashion of late to talk about Arminianism as the system of the Church of England, and of Calvinism as something opposite to it, to which the Church is hostile. That I may not be misunderstood in what I have said, or may have occasion further to say upon this subject, I must here declare, that I use the words Arminianism and Calvinism in that restricted sense in which they are now generally taken, to denote the doctrinal part of each system, as unconnected with the principles either of Arminians or Calvinists upon Church discipline and Church government. This being premised, I assert, what I often have before asserted, and by God’s grace I will persist in the assertion to my dying day, that so far is it from the truth that the Church

of England is decidedly Arminian, and hostile to Calvinism, that the truth is this, *that upon the principal points in dispute between the Arminians and the Calvinists upon all the points of doctrine characteristic of the two sects, the Church of England maintains an absolute neutrality; her Articles explicitly assert nothing but what is believed both by Arminians and by Calvinists.* The Calvinists indeed hold some opinions relative to the same points, which the Church of England has not gone the length of asserting in her Articles; but neither has she gone the length of explicitly contradicting those opinions; insomuch, that *there is nothing to hinder the Arminian and the highest supralapsarian Calvinist from walking together in the Church of England and Ireland as friends and brothers, if they both approve the discipline of the Church, and both are willing to submit to it.* Her discipline has been approved; it has been submitted to; it has been in former times most ably and zealously defended, by the highest supralapsarian Calvinists. Such was the great Usher; such was Whitgift; such were many more, burning and shining lights of our church in her early days (when first she shook off the Papal tyranny), long since gone to the resting place of the spirits of the just.—*Bishop HORSLEY's Charges*, p. 216.' — pp. 25, 26.

So that these unhappy Curates are turned out of their bread for an exposition of the Articles which such men as Sherlock, Cleaver, and Horsley, think may be fairly given of their meaning. We do not quote their authority, to show that the right interpretation is decided, but that it is doubtful — that there is a balance of authorities — that the opinion which Bishop Marsh has punished with poverty and degradation, has been considered to be legitimate, by men at least as wise and learned as himself. In fact, it is to us perfectly clear, that the Articles were originally framed to prevent the very practices which Bishop Marsh has used for their protection — they were purposely so worded, that Arminians and Calvinists

could sign them without blame. They were intended to combine both these descriptions of Protestants, and were meant principally for a bulwark against the Catholics.

‘Thus,’ says Bishop Burnet, ‘was the doctrine of the Church cast into a short and plain form; in which they took care both to establish the positive articles of religion, and to cut off the errors formerly introduced in the time of Popery, or of late broached by the Anabaptists and enthusiasts of Germany; *avoiding the niceties of schoolmen, or the peremptoriness of the writers of controversy; leaving in matters that are more justly controvertible, a liberty to divines to follow their private opinions, without thereby disturbing the peace of the Church.*’—History of the Reformation, Book I. part ii. p. 168. folio edition.

The next authority is that of Fuller.

‘In the Convocation now sitting, wherein Alexander Nowel, Dean of St. Paul’s, was Prolocutor, the nine-and-thirty Articles were composed. For the main they agree with those set forth in the reign of King Edward the Sixth, though in some particulars allowing more liberty to dissenting judgments. For instance, in this King’s Articles it is said, that it is to be believed that Christ went down to hell (to preach to the spirits there); which last clause is left out in these Articles, and men left to a latitude concerning the cause, time, and manner of his descent.

‘Hence some have unjustly taxed the composers for too much favour extended in their large expressions, clean through the contexture of these Articles, which should have tied men’s consciences up closer, in more strict and particularising propositions, *which indeed proceeded from their commendable moderation.* Children’s clothes ought to be made of the biggest, because afterwards their bodies will grow up to their garments. Thus the Articles of this English Protestant church, in the infancy thereof, they thought good to draw up in general terms, foreseeing that posterity would grow up to fill the same: I mean these holy men did pru-

dently prediscover, that differences in judgments would unavoidably happen in the Church, *and were loath to unchurch any, and drive them off from an ecclesiastical communion, for such petty differences, which made them pen the Articles in comprehensive words, to take in all who, differing in the branches, meet in the root of the same religion.*

‘Indeed most of them had formerly been sufferers themselves, and cannot be said, in compiling these Articles, (an acceptable service, no doubt,) to offer to God what cost them nothing, some having paid imprisonment, others exile, all losses in their estates, for this their experimental knowledge in religion, *which made them the more merciful and tender in stating those points*, seeing such who themselves have been most patient in bearing, will be most pitiful in burdening the consciences of others.’ — See FULLER’s *Church History*, book ix. p. 72. folio edit.

But this generous and pacific spirit gives no room for the display of zeal and theological learning. The gate of admission has been left too widely open. I may as well be without power at all, if I cannot force my opinions upon other people. What was purposely left indefinite, I must make finite and exclusive. Questions of contention and difference must be laid before the servants of the church, and nothing like neutrality in theological metaphysics allowed to the ministers of the Gospel. *I come not to bring peace, &c.*

The Bishop, however, seems to be quite satisfied with himself, when he states, that he has a *right to do* what he has done — just as if a man’s character with his fellow-creatures depended upon legal rights alone, and not upon a discreet exercise of those rights. A man may persevere in doing what he has a right to do, till the Chancellor shuts him up in bedlam, or till the mob pelt him as he passes. It must be presumed, that all men whom the law has invested with rights, Nature has invested with common sense, to

use those rights. For these reasons, children have no rights till they have gained some common sense, and old men have no rights after they lose their common sense. All men are at all times accountable to their fellow-creatures for the discreet exercise of every right they possess.

Prelates are fond of talking of *my* see, *my* clergy, *my* diocese, as if these things belonged to them, as their pigs and dogs belonged to them. They forget that the clergy, the diocese, and the Bishops themselves, all exist only for the public good; that the public are a third, and principal party in the whole concern. It is not simply the tormenting Bishop *versus* the tormented Curate, but the public against the system of tormenting; as tending to bring scandal upon religion and religious men. By the late alteration in the laws, the labourers in the vineyard are given up to the power of the inspectors of the vineyard. If he has the meanness and malice to do so, an inspector may worry and plague to death any labourer against whom he may have conceived an antipathy. As often as such cases are detected, we believe they will meet, in either House of Parliament, with the severest reprehension. The noblemen and gentlemen of England will never allow their parish clergy to be treated with cruelty, injustice, and caprice, by men who were parish clergymen themselves yesterday, and who were trusted with power for very different purposes.

The Bishop of Peterborough complains of the insolence of the answers made to him. This is certainly not true of Mr. Grimshawe, Mr. Neville, or of the author of the Appeal. They have answered his Lordship with great force, great manliness, but with perfect respect. Does the Bishop expect that humble men, as learned as himself, are to be driven from

their houses and homes by his new theology, and then to send him letters of thanks for the kicks and cuffs he has bestowed upon them? Men of very small incomes, be it known to his Lordship, have very often very acute feelings; and a Curate trod on feels a pang as great as when a Bishop is refuted.

We shall now give a specimen of some answers, which, we believe, would exclude a curate from the diocese of Peterborough, and contrast these answers with the articles of the Church to which they refer. The 9th Article of the Church of England is upon Original Sin. Upon this point his Lordship puts the following question:—

‘Did the fall of Adam produce such an effect on his posterity, that mankind became thereby a mass of mere corruption, or of absolute and entire depravity? Or is the effect only such, that we are *very far gone* from original righteousness, and of our own nature *inclined* to evil?’

Excluding Answer.

‘The fall of Adam produced such an effect on his posterity, that mankind became thereby a mass of mere corruption, or of absolute and entire depravity.’

The Ninth Article.

‘Original sin standeth not in the following of Adam (as the Pelagians do vainly talk); but it is the fault or corruption of the nature of every man, that naturally is engendered of the offspring of Adam, whereby man is very far gone from original righteousness, and is of his own nature inclined to evil, so that the flesh lusteth always contrary to the spirit; and therefore, in every person born into the world, it deserveth God’s wrath and damnation.’

The 9th Question, cap. 3d, on Free Will, is as follows:—Is it not contrary to Scripture to say, that man has no share in the work of his salvation?

*Excluding Answer.**Tenth Article.*

‘It is quite agreeable to Scripture to say, that man has no share in the work of his own salvation.’

‘The condition of man after the fall of Adam is such, that he cannot turn and prepare himself, by his own natural strength and good works, to faith, and calling upon God. Wherefore, we have no power to do good works pleasant and acceptable to God, without the grace of God by Christ preventing us, that we may have a good will, and working with us when we have that good will.’

On Redemption, his Lordship has the following question, Cap. 1st, Question 1st:—Did Christ die for all men, or did he die only for a chosen few?

*Excluding Answer.**Part of Article Seventeenth.*

‘Christ did not die for all men, but only for a chosen few.’

‘Predestination to life is the everlasting purpose of God, whereby (before the foundations of the world were laid) he hath constantly decreed by his counsel, secret to us, to deliver from curse and damnation those whom he hath chosen in Christ out of mankind, and to bring them by Christ unto everlasting salvation, as vessels made to honour.’

Now, whether these answers are right or wrong, we do not presume to decide; but we cannot help saying, there appears to be some little colour in the language of the articles for the errors of the respondent. It does not appear at first sight to be such a deviation from the plain, literal, and grammatical sense of the Articles, as to merit rapid and ignominious ejection from the bosom of the Church.

Now we have done with the Bishop. We give him all he asks as to his legal right; and only contend,

that he is acting a very indiscreet and injudicious part — fatal to his quiet — fatal to his reputation as a man of sense — blamed by ministers — blamed by all the Bench of Bishops — vexatious to the Clergy, and highly injurious to the Church. We mean no personal disrespect to the Bishop ; we are as ignorant of him as of his victims. We should have been heartily glad if the debate in Parliament had put an end to these blamable excesses ; and our only object, in meddling with the question, is to restrain the arm of Power within the limits of moderation and justice — one of the great objects which first led to the establishment of this Journal, and which, we hope, will always continue to characterise its efforts.

BOTANY BAY. (E. REVIEW, 1823.)

1. *Letter to Earl Bathurst, by the Honourable H. Grey Bennet, M. P.*
2. *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales. Ordered by the House of Commons to be printed, 19th June, 1822.*

MR. BIGGE'S Report is somewhat long, and a little clumsy; but it is altogether the production of an honest, sensible, and respectable man, who has done his duty to the public, and justified the expense of his mission to the fifth or pickpocket quarter of the globe.

What manner of man is Governor Macquarrie? — Is all that Mr. Bennet says of him in the House of Commons true? These are the questions which Lord Bathurst sent Mr. Bigge, and very properly sent him, 28,000 miles to answer. The answer is, that Governor Macquarrie is not a dishonest man, nor a jobber; but arbitrary, in many things scandalously negligent, very often wrong-headed, and, upon the whole, very deficient in that good sense, and vigorous understanding, which his new and arduous situation so manifestly requires.

Ornamental architecture in Botany Bay! How it could enter into the head of any human being to adorn public buildings at the Bay, or to aim at any other architectural purpose but the exclusion of wind and rain, we are utterly at a loss to conceive. Such an expense is not only lamentable for the waste of property it makes in the particular instance, but because

it destroys that guarantee of sound sense which the Government at home must require in those who preside over distant colonies. A man who thinks of pillars and pilasters, when half the colony are wet through for want of any covering at all, cannot be a wise or prudent person. He seems to be ignorant, that the prevention of rheumatism in all young colonies is a much more important object than the gratification of taste, or the display of skill.

‘ I suggested to Governor Macquarrie the expediency of stopping all work then in progress that was merely of an ornamental nature, and of postponing its execution till other more important buildings were finished. With this view it was, that I recommended to the Governor to stop the progress of a large church, the foundation of which had been laid previous to my arrival, and which, by the estimate of Mr. Greenway the architect, would have required six years to complete. By a change that I recommended, and which the Governor adopted, in the destination of the new Court-house at Sydney, the accommodation of a new church is probably by this time secured. As I conceived that considerable advantage had been gain by inducing Governor Macquarrie to suspend the progress of the larger church, I did not deem it necessary to make any pointed objection to the addition of these ornamental parts of the smaller one ; though I regretted to observe in this instance, as well as in those of the new stables at Sydney, the turnpike gate house and the new fountain there, as well as in the repairs of an old church at Paramatta, how much more the embellishment of these places had been considered by the Governor than the real and pressing wants of the colony. The buildings that I had recommended to his early attention in Sydney were, a new gaol, a school-house, and a market-house. The defects of the first of these buildings will be more particularly pointed out when I come to describe the buildings that have been erected in New South Wales. It is sufficient for me now to observe, that they were striking, and of a nature not to be

remedied by additions or repairs. The other two were in a state of absolute ruin; they were also of undeniable importance and necessity. Having left Sydney in the month of November, 1820, with these impressions, and with a belief that the suggestions I had made to Governor Macquarrie respecting them had been partly acted upon, and would continue to be so during my absence in Van Diemen's Land, it was not without much surprise and regret that I learnt, during my residence in that settlement, the resumption of the work at the large church in Sydney, and the steady continuation of the others that I had objected to, especially the Governor's stables at Sydney. I felt the greater surprise in receiving the information respecting this last-mentioned structure, during my absence in Van Diemen's Land, as the Governor himself had, upon many occasions, expressed to me his own regret at having ever sanctioned it, and his consciousness of its extravagant dimensions and ostentatious character.'—*Report*, pp. 51, 52.

One of the great difficulties in Botany Bay is to find proper employment for the great mass of convicts who are sent out. Governor Macquarrie selects all the best artisans, of every description, for the use of Government; and puts the poets, attornies, and politicians up to auction. The evil consequences of this are manifold. In the first place, from possessing so many of the best artificers, the Governor is necessarily turned into a builder; and immense drafts are drawn upon the Treasury at home, for buildings better adapted for Regent Street than the Bay. In the next place, the poor settler, finding that the convict attorney is very awkward at cutting timber, or catching kangaroos, soon returns him upon the hands of Government, in a much worse plight than that in which he was received. Not only are governors thus debauched into useless and expensive builders, but the colonists, who are scheming and planning with all the

activity of new settlers, cannot find workmen to execute their designs.

What two ideas are more inseparable than Beer and Britannia? — what event more awfully important to an English colony, than the erection of its first brew-house? — and yet it required, in Van Diemen's Land, the greatest solicitation to the Government, and all the influence of Mr. Bigge, to get it effected. The Government, having obtained possession of the best workmen, keep them; their manumission is much more infrequent than that of the useless and unprofitable convicts; in other words, one man is punished for his skill, and another rewarded for his inutility. Guilty of being a locksmith — guilty of stone masonry, or brick-making: — these are the second verdicts brought in, in New South Wales; and upon them is regulated the duration or mitigation of punishment awarded in the mother-country. At the very period when the Governor assured Lord Bathurst, in his despatches, that he kept and employed so numerous a gang of workmen, only because the inhabitants could not employ them, Mr. Bigge informs us, that their services would have been most acceptable to the colonists. Most of the settlers, at the time of Mr. Bigge's arrival, from repeated refusals and disappointments, had been so convinced of the impossibility of obtaining workmen, that they had ceased to make application to the Governor. Is it to be believed, that a governor, placed over a land of convicts, and capable of guarding his limbs from any sudden collision with odometrous stones, or vertical posts of direction, should make no distinction between the simple convict and the double and treble convict — the man of three juries, who has three times appeared at the

Bailey, trilarcenous — three times driven over the seas ?

‘ I think it necessary to notice the want of attention that has prevailed, until a very late period, at Sydney, to the circumstances of those convicts who have been transported a second and a third time. Although the knowledge of these facts is transmitted in the hulk lists, or acquired without difficulty during the passage, it never has occurred to Governor Macquarrie or to the superintendent of convicts, to make any difference in the condition of these men, not even to disappoint the views that they may be supposed to have indulged by the success of a criminal enterprise in England, and by transferring the fruits of it to New South Wales.

‘ To accomplish this very simple but important object, nothing more was necessary than to consign these men to any situation rather than that which their friends had selected for them, and distinctly to declare in the presence of their comrades at the first muster on their arrival, that no consideration or favour would be shown to those who had violated the law a second time, and that the mitigation of their sentences must be indefinitely postponed.’—*Report*, p. 19.

We were not a little amused at Governor Macquarrie’s laureate — a regular Mr. Southey — who, upon the King’s birth-day, sings the praises of Governor Macquarrie.* The case of this votary of Apollo and Mercury was a case for life ; the offence a menacing epistle, or, as low people call it, a *threatening letter*. He has been pardoned, however — bursting his shackles, like Orpheus of old, with song and metre, and is well spoken of by Mr. Bigge, but no specimen of his poetry given. One of the best and most enlightened men in the settlement appears to be Mr. Marsden, a clergyman of Paramatta. Mr. Bennet represents him as a gentleman of great feeling,

* *Vide Report*, p. 146.

whose life is embittered by the scenes of horror and vice it is his lot to witness at Paramatta. Indeed he says of himself, that, in consequence of these things, 'he does not enjoy one happy moment from the beginning to the end of the week!' This letter, at the time, produced a very considerable sensation in this country. The idea of a man of refinement and feeling wearing away his life in the midst of scenes of crime and debauchery to which he can apply no corrective is certainly a very melancholy and affecting picture; but there is no story, however elegant and eloquent, which does not require, for the purposes of justice, to be turned to the other side, and viewed in reverse. The Rev. Mr. Marsden (says Mr. Bigge), *being himself accustomed to traffic in spirits*, must necessarily feel displeased at having so many public houses licensed in the neighbourhood (p. 14.).

'As to Mr. Marsden's troubles of mind' (says the Governor), 'and pathetic display of sensibility and humanity, they must be so deeply seated, and so far removed from the surface, as to escape all possible observation. His habits are those of a man for ever engaged in some active, animated pursuit. No man travels more from town to town, or from house to house. His deportment is at all times that of a person the most gay and happy. When I was honoured with his society, he was by far the most cheerful person I met in the colony. Where his hours of sorrow were spent, it is hard to divine; for the variety of his pursuits, both in his own concerns, and in those of others, is so extensive, in farming, grazing, manufactories, transactions, that, with his clerical duties, he seems, to use a common phrase, to have his hands full of work. And the particular subject to which he imputes this extreme depression of mind, is, besides, one for which few people here will give him much credit.'—*Macquarrie's Letter to Lord Sidmouth*, p. 18.

There is certainly a wide difference between a man of so much feeling, that he has not a moment's happiness from the beginning to the end of the week, and a little merry bustling clergyman, largely concerned in the sale of rum, and brisk at a bargain for barley. Mr. Bigge's evidence, however, is very much in favour of Mr. Marsden. He seems to think him a man of highly respectable character and superior understanding, and that he has been dismissed from the magistracy by Governor Macquarrie, in a very rash, unjustifiable, and even tyrannical manner; and in these opinions, we must say, the facts seem to bear out the report of the Commissioner.

Colonel Macquarrie not only dismisses honest and irreproachable men in a country where their existence is scarce, and their services inestimable, but he advances convicts to the situation and dignity of magistrates. Mr. Bennet lays great stress upon this, and makes it one of his strongest charges against the Governor; and the Commissioner also takes part against it. But we confess we have great doubts on the subject; and are by no means satisfied, that the system of the Governor was not, upon the whole, the wisest and best adapted to the situation of the colony. Men are governed by words; and under the infamous term *convict*, are comprehended crimes of the most different degrees and species of guilt. One man is transported for stealing three hams and a pot of sausages; and in the next birth to him on board the transport is a young surgeon, who has been engaged in the mutiny at the Nore; the third man is for extorting money; the fourth was in a respectable situation of life at the time of the Irish Rebellion, and was so ill read in history, as to imagine that Ireland had been ill treated by England, and so

bad a reasoner as to suppose, that nine Catholics ought not to pay tithes to one Protestant. Then comes a man who set his house on fire, to cheat the Phoenix Office ; and, lastly, that most glaring of all human villians, a poacher, driven from Europe, wife and child, by thirty lords of manors, at the Quarter Sessions, for killing a partridge. Now, all these are crimes no doubt—particularly the last ; but they are surely crimes of very different degrees of intensity, to which different degrees of contempt and horror are attached—and from which those who have committed them may, by subsequent morality, emancipate themselves, with different degrees of difficulty, and with more or less of success. A warrant granted by a reformed bacon stealer would be absurd ; but there is hardly any reason why a foolish hot-brained young blockhead, who chose to favour the mutineers at the Nore, when he was sixteen years of age, may not make a very loyal subject, and a very respectable and respected magistrate when he is forty years of age, and has cast his Jacobine teeth, and fallen into the practical jobbing and loyal baseness which so commonly develops itself about that period of life. Therefore, to say that a man must be placed in no situation of trust or elevation, as a magistrate, merely because he is a convict, is to govern mankind with a dictionary, and to surrender sense and usefulness to sound. Take the following case, for instance, from Mr. Bigge :—

‘ The next person, from the same class, that was so distinguished by Governor Macquarrie, was the Rev. Mr. Fulton. He was transported by the sentence of a court martial in Ireland, during the Rebellion ; and on his arrival in New South Wales in the year 1800, was sent to Norfolk Island to officiate as chaplain. He returned to New South Wales in the year 1804, and performed the duties of chaplain at Sydney and Paramatta.

‘ In the divisions that prevailed in the colony previous to the arrest of Governor Bligh, Mr. Fulton took no part ; but, happening to form one of his family when the person of the Governor was menaced with violence, he courageously opposed himself to the military party that entered the house, and gave an example of courage and devotion to the authority of Governor Bligh, which, if partaken either by the officer or his few adherents, would have spared him the humiliation of a personal arrest, and rescued his authority from the disgrace of open and violent suspension.’ — *Report*, pp. 83, 84.

The particular nature of the place too must be remembered. It is seldom, we suspect, that absolute dunces go to the Bay, but commonly men of active minds, and considerable talents in their various lines — who have not learnt, indeed, the art of self-discipline and control, but who are sent to learn it in the bitter school of adversity. And when this medicine produces its proper effect — when sufficient time has been given to show a thorough change in character and disposition — a young colony really cannot afford to dispense with the services of any person of superior talents. Activity, resolution, and acuteness, are of such immense importance in the hard circumstances of a new State, that they must be eagerly caught at, and employed as soon as they are discovered. Though all may not be quite so unobjectionable as could be wished —

‘ Res dura, et regni novitas me talia cogunt
Moliri’ —

as Colonel Macquarrie probably quoted to Mr. Commissioner Bigge. As for the conduct of those extramoralists, who come to settle in a land of crime, and refuse to associate with a convict legally pardoned, however light his original offence, however perfect

his subsequent conduct — we have no toleration for such folly and foppery. To sit down to dinner with men who have not been tried for their lives is a luxury which cannot be enjoyed in such a country. It is entirely out of the question ; and persons so dainty, and so truly admirable, had better settle at Clapham Common than at Botany Bay. Our trade in Australasia is to turn scoundrels into honest men. If you come among us, and bring with you a good character, and will lend us your society as a stimulus and reward to men recovering from degradation, you will confer the greatest possible benefit upon the colony ; but if you turn up your nose at repentance, insult those unhappy people with your character, and fiercely stand up as a moral bully, and a virtuous braggadocio, it would have been far better for us if Providence had directed you to any other part of the globe than to Botany Bay — which was colonised, not to gratify the insolence of Pharisees, but to heal the contrite spirit of repentant sinners. Mr. Marsden, who has no happiness from six o'clock Monday morning, till the same hour the week following, will not meet pardoned convicts in society. We have no doubt Mr. Marsden is a very respectable clergyman ; but is there not something very different from this in the Gospel ? The most resolute and inflexible persons in the rejection of pardoned convicts were some of the marching regiments stationed at Botany Bay — men, of course, who had uniformly shunned, in the Old World, the society of gamesters, prostitutes, drunkards, and blasphemers — who had ruined no tailors, corrupted no wives, and had entitled themselves, by a long course of solemnity and decorum, to indulge in all the insolence of purity and virtue.

In this point, then, of restoring convicts to society,

we side, as far as the principle goes, with the Governor ; but we are far from undertaking to say that his application of the principle has been on all occasions prudent and judicious. Upon the absurdity of his conduct in attempting to *force* the society of the pardoned convicts upon the undetected part of the colony, there can be no doubt. These are points upon which every body must be allowed to judge for themselves. The greatest monarchs in Europe cannot control opinion upon those points — sovereigns far exceeding Colonel Lachlan Macquarrie, in the antiquity of their dynasty, and the extent, wealth, and importance of their empire.

‘ It was in vain to assemble them’ (the pardoned convicts) ‘ even on public occasions, at Government House, or to point them out to the especial notice and favour of strangers, or to favour them with particular marks of his own attention upon these occasions, if they still continued to be shunned, or disregarded by the rest of the company.

‘ With the exception of the Reverend Mr. Fulton, and, on some occasions, of Mr. Redfern, I never observed that the other persons of this class participated in the general attentions of the company ; and the evidence of Mr. Judge Advocate Wylde and Major Bell both prove the embarrassment in which they were left on occasions that came within their notice.

‘ Nor has the distinction that has been conferred upon them by Governor Macquarrie produced any effect in subduing the prejudices or objections of the class of free inhabitants to associate with them. One instance only has occurred, in which the wife of a respectable individual, and a magistrate, has been visited by the wives of the officers of the garrison, and by a few of the married ladies of the colony. It is an instance that reflects equal credit upon the individual herself, as upon the feelings and motives of those by whom she has been so noticed ; but the circumstances of her case were very peculiar, and those that led to her introduction to society

were very much of a personal kind. It has generally been thought, that such instances would have been more numerous if Governor Macquarrie had allowed every person to have followed the dictates of their own judgment upon a subject, on which, of all others, men are least disposed to be dictated to, and most disposed to judge for themselves.

‘ Although the emancipated convicts, whom he has selected from their class, are persons who generally bear a good character in New South Wales, yet that opinion of them is by no means universal. Those, however, who entertained a good opinion of them would have proved it by their notice, as Mr. M^r Arthur has been in the habit of doing, by the kind and marked notice that he took of Mr. Fitzgerald; and those who entertained a different opinion, would not have contracted an aversion to the principle of their introduction, from being obliged to witness what they considered to be an indiscreet and erroneous application of it.’—*Report*, p. 150.

We do not think Mr. Bigge exactly seizes the sense of Colonel Macquarrie’s phrase, when the Colonel speaks of restoring men to the rank of society they have lost. Men may either be classed by wealth and education, or by character. All honest men, whether counts or cobblers, are of the same rank, if classed by moral distinctions. It is a common phrase to say, that such a man can no longer be ranked among honest men; that he has been degraded from the class of respectable persons; and, therefore, by restoring a convict to the rank he has lost, the Governor may very fairly be supposed to mean the moral rank. In discussing the question of granting offices of trust to convicts, the importance of the *Scelerati* must not be overlooked. Their numbers are very considerable. They have one eighth of all the granted land in the colony; and there are among them individuals of very large fortune. Mr. Redfern has 2600 acres, Mr. Lord 4365 acres, and Mr. Samuel Terry 19,000 acres. As

this man's history is a specimen of the mud and dirt out of which great families often arise, let the *Terry Filiation*, the future warriors, legislators, and nobility of the Bay, learn from what, and whom, they sprang.

‘ The first of these individuals, Samuel Terry, was transported to the colony when young. He was placed in a gang of stone-masons at Paramatta, and assisted in the building of the gaol. Mr. Marsden states, that during this period he was brought before him for neglect of duty, and punished; but, by his industry in other ways, he was enabled to set up a small retail shop, in which he continued till the expiration of his term of service. He then repaired to Sydney, where he extended his business, and, by marriage, increased his capital. He for many years kept a public house and retail shop, to which the smaller settlers resorted from the country, and where, after intoxicating themselves with spirits, they signed obligations and powers of attorney to confess judgment, which were always kept ready for execution. By these means, and by an active use of the common arts of over-reaching ignorant and worthless men, Samuel Terry has been able to accumulate a considerable capital, and a quantity of land in New South Wales, inferior only to that which is held by Mr. D’Arcy Wentworth. He ceased, at the late regulations introduced by the magistrates at Sydney, in February, 1820, to sell spirituous liquors, and he is now become one of the principal speculators in the purchase of investments at Sydney, and lately established a water-mill in the swampy plains between that town and Botany Bay, which did not succeed. Out of the 19,000 acres of land held by Samuel Terry, 140 only are stated to be cleared; but he possesses 1450 head of horned cattle, and 3800 sheep.’—*Report*, p. 141.

Upon the subject of the New South Wales Bank, Mr. Bigge observes,—

‘ Upon the first of these occasions, it became an object both with Governor Macquarrie, and Mr. Judge-Advocate Wyld, who took an active part in the establishment of the

bank, to unite in its favour the support and contributions of the individuals of all classes of the colony. Governor Macquarrie felt assured, that, without such co-operation, the bank could not be established; for he was convinced that the emancipated convicts were the most opulent members of the community. A committee was formed for the purpose of drawing up the rules and regulations of the establishment, in which are to be found the names of George Howe, the printer of the Sydney Gazette, who was also a retail dealer; Mr. Simon Lord, and Mr. Edward Eager, all emancipated convicts, and the last only conditionally.

‘Governor Macquarrie had always understood, and strongly wished, that in asking for the co-operation of all classes of the community in the formation of the bank, a share in its direction and management should also be communicated to them.’
—*Report*, p. 150.

In the discussion of this question, we became acquainted with a piece of military etiquette, of which we were previously ignorant. An officer, invited to dinner by the Governor, cannot refuse, unless in case of sickness. This is the most complete tyranny we ever heard of. If the officer comes out to his duty at the proper minute, with his proper number of buttons and epaulettes, what matters it to the Governor, or any body else, where he dines? He may as well be ordered what to eat, as where to dine—be confined to the upper or under side of the meat—be denied gravy, or refused melted butter. But there is no end to the small tyranny, and puerile vexations of a military life.

The mode of employing convicts upon their arrival appears to us very objectionable. If a man is skilful as a mechanic, he is added to the Government gangs; and in proportion to his skill and diligence, his chance of manumission, or of remission of labour, is lessened. If he is not skilful, or not skilful in any

trade wanted by Government, he is applied for by some settler, to whom he pays from 5s. to 10s. a week ; and is then left at liberty to go where, and work for whomsoever, he pleases. In the same manner, a convict who is rich is applied for, and obtains his weekly liberty and idleness by the purchased permission of the person to whom he is consigned.

The greatest possible inattention or ignorance appears to have prevailed in manumitting convicts for labour — and for *such* labour ! not for cleansing Augean stables, or draining Pontine marshes, or damming out a vast length of the Adriatic, but for working five weeks with a single horse and cart in making the road to Bathurst Plains. Was such labour worth five pounds ? And is it to be understood, that liberty is to be restored to any man who will do five pounds worth of work in Australasia ? Is this comment upon transportation to be circulated in the cells of Newgate, or in the haunts of those persons who are doomed to inhabit them ?

‘ Another principle by which Governor Macquarrie has been guided in bestowing pardons and indulgences, is that of considering them as rewards for any particular labour or enterprise. It was upon this principle, that the men who were employed in working upon the Bathurst road, in the year 1815, and those who contributed to that operation by the loan of their own carts and horses, or of those that they procured, obtained pardons, emancipations, and tickets of leave. To 39 men who were employed as labourers in this work, three free pardons were given, one ticket of leave, and 35 emancipations ; and two of them only had held tickets of leave before they commenced their labour. Seven convicts received emancipations for supplying horses and carts for the carriage of provisions and stores as the party was proceeding ; six out of this number having previously held tickets of leave.

‘ Eight other convicts (four of whom held tickets of leave) received emancipations for assisting with carts, and one horse to each, in the transport of provisions and baggage for the use of Governor Macquarrie and his suite, on their journey from the river Nepean to Bathurst, in the year 1816; a service that did not extend beyond the period of five weeks, and was attended with no risk, and very little exertion.

‘ Between the months of January, 1816, and June, 1818, nine convicts, of whom six held tickets of leave, obtained emancipations for sending carts and horses to convey provisions and baggage from Paramatta to Bathurst, for the use of Mr. Oxley, the surveyor-general, in his two expeditions into the interior of the country. And in the same period, 23 convict labourers and mechanics obtained emancipations for labour and service performed at Bathurst.

‘ The nature of the services performed by these convicts, and the manner in which some of them were recommended, excited much surprise in the colony, as well as great suspicion of the purity of the channels through which the recommendations passed.’—*Report*, pp. 122, 123.

If we are to judge from the number of jobs detected by Mr. Bigge, Botany Bay seems very likely to do justice to the mother-country from whence it sprang. Mr. Redfern, surgeon, seems to use the public rhubarb for his private practice. Mr. Hutchinson, superintendent, makes a very comfortable thing of the assignment of convicts. Major Druit was found selling their own cabbages to Government in a very profitable manner; and many comfortable little practices of this nature are noticed by Mr. Bigge.

Among other sources of profit, the superintendent of convicts was the banker; two occupations which seem to be eminently compatible with each other, inasmuch as they afford to the superintendent the opportunity of evincing his impartiality, and loading with equal labour every convict, without reference to

their banking accounts, to the profit they afford, or the trouble they create. It appears, however (very strangely), from the Report, that the money of convicts was not always recovered with the same readiness it was received.

Mr. Richard Fitzgerald, in September, 1819, was comptroller of provisions in Emu Plains, storekeeper at Windsor, and superintendent of Government works at the same place. He was also a proprietor of land and stock in the neighbourhood, and kept a public-house in Windsor, of which an emancipated Jew was the ostensible manager, upon whom Fitzgerald gave orders for goods and spirits in payment for labour on the public works. These two places are fifteen miles distant from each other, and convicts are to be watched and managed at both. It cannot be imagined that the convicts are slow in observing or following these laudable examples; and their conduct will add another instance of the vigilance of Macquarrie's government.

‘ The stores and materials used in the different buildings at Sydney are kept in a magazine in the lumber yard, and are distributed according to the written requisitions of the different overseers that are made during the day, and that are addressed to the storekeeper in the lumber yard. They are conveyed from thence to the buildings by the convict mechanics; and no account of the expenditure or employment of the stores is kept by the overseers, or rendered to the storekeeper. It was only in the early part of the year 1820 that an account was opened by him of the different materials used in each work or building; and in February, 1821, this account was considerably in arrear. The temptation, therefore, that is afforded to the convict mechanics who work in the lumber yard, in secreting tools, stores, and implements, and to those who work at the different buildings, is very great, and the loss to Government is considerable. The tools, moreover,

have not latterly been 'mustered as they used to be once a month, except where one of the convicts is removed from Sydney to another station.'—*Report*, pp. 36, 37.

If it was right to build fine houses in a new colony, common sense seems to point out a control upon the expenditure, with such a description of workmen. What must become of that country where the buildings are useless, the Governor not wise, the public the paymaster, the accounts not in existence, and all the artisans thieves?

An horrid practice prevailed, of the convicts accepting a sum of money from the captain, in their voyage out, in lieu of their regular ration of provisions. This ought to be restrained by the severest penalties.

What is it that can be urged for Governor Macquarrie, after the following picture of the Hospital at Paramatta? It not only justifies his recall, but seems to require (if there are any means of reaching such neglect) his severe punishment.

'The women, who had become most profligate and hardened by habit, were associated in their daily tasks with those who had very lately arrived, to whom the customs and practices of the colony were yet unknown, and who might have escaped the consequences of such pernicious lessons, if a little care, and a small portion of expense, had been spared in providing them with a separate apartment during the hours of labour. As a place of employment, the factory at Paramatta was not only very defective, but very prejudicial. The insufficient accommodation that it afforded to those females who might be well disposed presented an early incitement, if not an excuse, for their resorting to indiscriminate prostitution; and on the evening of their arrival at Paramatta, those who were not deploring their state of abandonment and distress, were traversing the streets in search of the guilty means of future support. The state in which the place

itself was kept, and the state of disgusting filth in which I found it, both on an early visit after my arrival, and on one preceding my departure; the disordered, unruly, and licentious appearance of the women, manifested the little degree of control in which the female convicts were kept, and the little attention that was paid to any thing beyond the mere performance of a certain portion of labour.'—*Report*, p. 70.

It might naturally be supposed, that any man sent across the globe with a good salary, for the express purpose of governing, and, if possible, of reforming convicts, would have preferred the morals of his convicts to the accommodation of his horses. Let Mr. Bigge, a very discreet and moderate man, be heard upon these points.

‘ Having observed, in Governor Macquarrie’s answer to Mr. Marsden, that he justified the delay that occurred, and was still to take place, in the construction of a proper place of reception for the female convicts, by the want of any specific instructions from your Lordship to undertake such a building, and which he states that he solicited at an early period of his government, and considered indispensable, I felt it to be my duty to call to the recollection of Governor Macquarrie, that he had undertaken several buildings of much less urgent necessity than the factory at Paramatta, without waiting for any such indispensable authority; and I now find that the construction of it was announced by him to your Lordship in the year 1817, as then in his contemplation, without making any specific allusion to the evils which the want of it had so long occasioned; that the contract for building it was announced to the public on the 21st May, 1818, and that your Lordship’s approval of it was not signified until the 24th August, 1818, and could not have reached Governor Macquarrie’s hands until nearly a year after the work had been undertaken. It appears, therefore, that if want of authority had been the sole cause of the delay in building the factory at Paramatta, that cause would not only have operated in the month of March, 1818, but it would have con-

tinued to operate until the want of authority had been formally supplied. Governor Macquarrie, however, must be conscious, that after he had stated to Mr. Marsden in the year 1815, and with an appearance of regret, that the want of authority prevented him from undertaking the construction of a building of such undeniable necessity and importance as the factory at Paramatta, he had undertaken several buildings, which, though useful in themselves, were of less comparative importance; *and had commenced, in the month of August, 1817, the laborious and expensive construction of his own Stables at Sydney, to which I have already alluded, without any previous communication to your Lordship, and in direct opposition to an instruction that must have then reached him, and that forcibly warned him of the consequences.*—*Report*, p. 71.

It is the fashion very much among the Tories of the House of Commons, and all those who love the effects of public liberty without knowing or caring how it is preserved, to attack every person who complains of abuses, and to accuse him of gross exaggeration. No sooner is the name of any public thief, or of any tormentor, or oppressor, mentioned in that Honourable House, than out bursts the spirit of jobbing eulogium, and there is not a virtue under heaven which is not ascribed to the delinquent in question, and vouched for by the most irrefragable testimony. If Mr. Bennet or Sir Francis Burdett had attacked them, and they had now been living, how many honourable members would have vouched for the honesty of Dudley and Empsom, the gentleness of Jeffries, or the genius of Blackmore? What human virtue did not Aris and the governor of Ilchester gaol possess? Who was not ready to come forward to vouch for the attentive humanity of Governor Macquarrie? What scorn and wit would it have produced from the Treasury Bench, if Mr.

Bennet had stated the superior advantages of the horses over the convicts? — and all the horrors and immoralities, the filth and wretchedness, of the female prison of Paramatta? Such a case, proved, as this now is beyond the power of contradiction, ought to convince the most hardy and profligate scoffers, that there is really a great deal of occasional neglect, and oppression in the conduct of public servants; and that in spite of all the official praise, which is ever ready for the perpetrators of crime, there is a great deal of real malversation which should be dragged to the light of day, by the exertions of bold and virtuous men. If we had found, from the Report of Mr. Bigge, that the charges of Mr. Bennet were without any, or without adequate foundation, it would have given us great pleasure to have vindicated the Governor; but Mr. Bennet has proved his indictment. It is impossible to read the foregoing quotation, and not to perceive, that the conduct and proceedings of Governor Macquarrie imperiously required the exposure they have received; and that it would have been much to the credit of Government if he had been removed long ago, from a situation which, but for the exertions of Mr. Bennet, we believe he would have held to this day.

The sick, from Mr. Bigge's Report, appear to have fared as badly as the sinful. Good water was scarce, proper persons to wait upon the patients could not be obtained; and so numerous were the complaints from this quarter, that the Governor makes an order for the exclusion of all hospital grievances and complaints, *except on one day in the month* — dropsy swelling, however, fever burning, and ague shaking, in the mean time, without waiting for the arrangements of Governor Macquarrie, or consulting the *Mollia tempora fandi*.

In permitting individuals to distil their own grain, the Government of Botany Bay appears to us to be quite right. It is impossible, in such a colony, to prevent unlawful distillation to a considerable extent ; and it is as well to raise upon spirits (as something must be taxed) that slight duty which renders the contraband trade not worth following. Distillation, too, always insures a magazine against famine, by which New South Wales has more than once been severely visited. It opens a market for grain where markets are very distant, and where redundancy and famine seem very often to succeed each other. The cheapness of spirits, to such working people as know how to use them with moderation, is a great blessing ; and we doubt whether that moderation, after the first burst of ebriety, is not just as likely to be learnt in plenty, as in scarcity.

We were a little surprised at the scanty limits allowed to convicts for sleeping on board the transports. Mr. Bigge (of whose sense and humanity we really have not the slightest doubt) states eighteen inches to be quite sufficient — twice the length of a small sheet of letter-paper. The printer's devil, who carries our works to the press, informs us, that the allowance to the demons of the type is double foolscap length, or twenty-four inches. The great city upholsterers generally consider six feet as barely sufficient for a person rising in business, and assisting occasionally at official banquets.

Mrs. Fry's * system is well spoken of by Mr.

* We are sorry it should have been imagined, from some of our late observations on prison discipline, that we meant to disparage the exertions of Mrs. Fry. For prisoners before trial, it is perfect ; but where imprisonment is intended for punishment, and not for

Bigge ; and its useful effect in promoting order and decency among floating convicts fully admitted.

In a voyage to Botany Bay by Mr. Read, he states that, while the convict vessel lay at anchor, about to sail, a boat from shore reached the ship, and from it stepped a clerk of the Bank of England. The convicts felicitated themselves upon the acquisition of so gentlemanlike a companion ; but it soon turned out that the visitant had no intention of making so long a voyage. Finding that they were not to have the pleasure of his company, the convicts very naturally thought of picking his pockets ; the necessity of which professional measure was prevented, by a speedy distribution of their contents. Forth from his bill-case, this votary of Plutus drew his nitid Newlands ; all the forgers and utterers were mustered on deck ; and to each of them was well and truly paid into his hand, a five pound note ; less acceptable, perhaps, than if privately removed from the person, but still joyfully received. This was well intended on the part of the Directors : but the consequences it is scarcely necessary to enumerate ; a large stock of rum was immediately laid in from the circumambient slop boats ; and the materials of constant intoxication secured for the rest of the voyage.

detention, it requires, as we have endeavoured to show, a very different system. The Prison Society (an excellent, honourable, and most useful institution of some of the best men in England,) have certainly, in their first Numbers, fallen into the common mistake, of supposing that the reformation of the culprit, and not the prevention of the crime, was the main object of imprisonment ; and have, in consequence, taken some false views of the method of treating prisoners — the exposition of which, after the usual manner of flesh and blood, makes them a little angry. But, in objects of so high a nature, what matters *who* is right ? — the only question is, *What* is right ?

The following account of pastoral convicts is striking and picturesque : —

‘ I observed that a great many of the convicts in Van Diemen’s Land wore jackets and trousers of the kangaroo skin, and sometimes caps of the same material, which they obtain from the stock-keepers who are employed in the interior of the country. The labour of several of them differs, in this respect, from that of the convicts in New South Wales, and is rather pastoral than agricultural. Permission having been given, for the last five years, to the settlers to avail themselves of the ranges of open plains and vallies that lie on either side of the road leading from Austin’s Ferry to Launceston, a distance of 120 miles, their flocks and herds have been committed to the care of convict shepherds and stock-keepers, who are sent to these cattle ranges, distant sometimes 30 or 40 miles from their master’s estates.

‘ The boundaries of these tracts are described in the tickets of occupation by which they are held, and which are made renewable every year, on payment of a fee to the Lieutenant-governor’s clerk. One or more convicts are stationed on them, to attend to the flocks and cattle, and are supplied with wheat, tea and sugar, at the monthly visits of the owner. They are allowed the use of a musket and a few cartridges to defend themselves against the natives ; and they have also dogs, with which they hunt the kangaroos, whose flesh they eat, and dispose of their skins to persons passing from Hobart Town to Launceston, in exchange for tea and sugar. They thus obtain a plentiful supply of food, and sometimes succeed in cultivating a few vegetables. Their habitations are made of turf and thatched, as the bark of the dwarf eucalyptus, or gum-trees of the plains ; and the interior, in Van Diemen’s Land, is not of sufficient expanse to form covering or shelter.’
—*Report*, pp. 107, 108.

A London thief, clothed in kangaroo’s skins, lodged under the bark of the dwarf eucalyptus, and keeping sheep, fourteen thousand miles from Piccadilly, with a crook bent into the shape of a picklock, is not an

uninteresting picture ; and an engraving of it might have a very salutary effect — provided no engraving were made of his convict master, to whom the sheep belong.

The Maroon Indians were hunted by dogs — the fugitive convicts are recovered by the natives.

‘ The native blacks that inhabit the neighbourhood of Port Hunter and Port Stephens have become very active in retaking the fugitive convicts. They accompany the soldiers who are sent in pursuit, and, by the extraordinary strength of sight they possess, improved by their daily exercise of it in pursuit of kangaroos and opossums, they can trace to a great distance, with wonderful accuracy, the impressions of the human foot. Nor are they afraid of meeting the fugitive convicts in the woods, when sent in their pursuit, without the soldiers : by their skill in throwing their long and pointed wooden darts, they wound and disable them, strip them of their clothes, and bring them back as prisoners, by unknown roads and paths, to the Coal River.

‘ They are rewarded for these enterprises by presents of maize and blankets ; and, notwithstanding the apprehensions of revenge from the convicts whom they bring back, they continue to live in Newcastle and its neighbourhood ; but are observed to prefer the society of the soldiers to that of the convicts.’—*Report*, p. 117.

Of the convicts in New South Wales, Mr. Bigge found about eight or nine in an hundred to be persons of respectable character and conduct, though the evidence respecting them is not quite satisfactory. But the most striking and consolatory passage in the whole Report is the following : —

‘ The marriages of the native-born youths with female convicts are very rare ; a circumstance that is attributable to the general disinclination to early marriage that is observable amongst them, and partly to the abandoned and

dissolute habits of the female convicts; but chiefly to a sense of pride in the native-born youths, approaching to contempt for the vices and depravity of the convicts, even when manifested in the persons of their own parents.'—*Report*, p. 105.

Every thing is to be expected from these feelings. They convey to the mother-country the first proof that the foundations of a mighty empire are laid.

We were somewhat surprised to find Governor Macquarrie contending with Mr. Bigge, that it was no part of his, the Governor's, duty to select and separate the useless from the useful convicts, or to determine, except in particular cases, to whom they are to be assigned. In other words, he wishes to effect the customary separation of salary and duty — the grand principle which appears to pervade all human institutions, and to be the most invincible of all human abuses. Not only are Church, King, and State, allured by this principle of vicarious labour, but the pot-boy has a lower pot-boy, who, for a small portion of the small gains of his principal, arranges, with inexhaustible sedulity, the subdivided portions of drink, and, intensely perspiring, disperses, in bright pewter, the frothy elements of joy.

There is a very awkward story of a severe flogging inflicted upon three freemen by Governor Macquarrie, without complaint to, or intervention of, any magistrate; a fact not denied by the Governor, and for which no adequate apology, nor any thing approaching to an adequate apology, is offered. These Asiatic and Satrapical proceedings, however, we have reason to think, are exceedingly disrelished by London Juries. The profits of having been unjustly flogged at Botany Bay (Scarlett for the plaintiff) is good property, and would fetch a very considerable sum at

the Auction Mart. The Governor, in many instances, appears to have confounded diversity of opinion upon particular measures, with systematic opposition to his Government, and to have treated as disaffected persons those whom, in favourite measures, he could not persuade by his arguments, nor influence by his example, and on points where every man has a right to judge for himself, and where authority has no legitimate right to interfere, much less to dictate.

To the charges confirmed by the statement of Mr. Bigge, Mr. Bennet adds, from the evidence collected by the Gaol Committee, that the fees in the Governor's Court, collected by the authority of the Governor, are most exorbitant and oppressive; and that illegal taxes are collected under the sole authority of the Governor. It has been made, by colonial regulations, a capital offence to steal the wild cattle; and, in 1816, three persons were convicted of stealing a wild bull, *the property of our Sovereign Lord the King*. Now, our Sovereign Lord the King (whatever be his other merits or demerits) is certainly a very good-natured man, and would be the first to lament that an unhappy convict was sentenced to death for killing one of his wild bulls on the other side of the world. The cases of Mr. Moore and of William Stewart, as quoted by Mr. Bennet, are very strong. If they are answerable, they should be answered. The concluding letter to Mr. Stewart is, to us, the most decisive proof of the unfitness of Colonel Macquarrie for the situation in which he was placed. The Ministry at home, after the authenticity of the letter was proved, should have seized upon the first decent pretext of recalling the Governor, of thanking him in the name of his Sovereign, for his valuable services (not omit-

ting his care of the wild bulls) and of dismissing him to half pay — and insignificance.

As to the Trial by Jury, we cannot agree with Mr. Bennet, that it would be right to introduce it at present, for reasons we have given in a previous Article, and which we see no reason for altering. The time of course will come when it would be in the highest degree unjust and absurd, to refuse to that settlement the benefit of popular institutions. But they are too young, too few, and too deficient for such civilised machinery at present. 'I cannot come to serve upon the Jury — the waters of the Hawkesbury are out, and I have a mile to swim — the kangaroos will break into my corn — the convicts have robbed me — my little boy has been bitten by an *ornithorynchus paradoxus* — I have sent a man fifty miles with a sack of flour to buy a pair of breeches for the assizes, and he is not returned.' These are the excuses which, in new colonies, always prevent Trial by Jury; and make it desirable for the first half century of their existence, that they should live under the simplicity and convenience of despotism — such modified despotism (we mean) as a British House of Commons (always containing men as bold and honest as the Member for Shrewsbury) will permit, in the governors of their distant colonies.

Such are the opinions formed of the conduct of Governor Macquarrie by Mr. Bigge. Not the slightest insinuation is made against the integrity of his character. Though almost every body else has a job, we do not perceive that any is imputed to this gentleman; but he is negligent, expensive, arbitrary, ignorant, and clearly deficient in abilities for the task committed to his charge. It is our decided opinion, therefore, that Mr. Bennet has rendered a valuable

service to the public, in attacking and exposing his conduct. As a gentleman and an honest man, there is not the smallest charge against the Governor ; but a gentleman, and a very honest man, may very easily ruin a very fine colony. The colony itself, disencumbered of Colonel Lachlan Macquarrie, will probably become a very fine empire ; but we can scarcely believe it is of any present utility as a place of punishment. The history of emancipated convicts, who have made a great deal of money by their industry and their speculations, necessarily reaches this country, and prevents men who are goaded by want, and hovering between vice and virtue, from looking upon it as a place of suffering — perhaps leads them to consider it as the land of hope and refuge, to them unattainable, except by the commission of crime. And so they lift up their hands at the Bar, hoping to be transported, —

‘ Stabant orantes primi transmittere cursum

Tendebantque manus, ripæ ulterioris amore.’

It is not possible, in the present state of the law, that these enticing histories of convict prosperity should be prevented, by one uniform system of severity exercised in New South Wales, upon all transported persons. Such different degrees of guilt are included under the term of convict, that it would violate every feeling of humanity, and every principle of justice, to deal out one measure of punishment to all. We strongly suspect that this is the root of the evil. We want new gradations of guilt to be established by law — new names for those gradations — and a different measure of good and evil treatment attached to those denominations. In this manner,

the mere *convict*, the *rogue and convict*, and the *incorrigible convict*, would expect, upon their landing, to be treated with very different degrees of severity. The first might be merely detained in New South Wales without labour or coercion; the second compelled, at all events, to work out two thirds of his time, without the possibility of remission; and the third be destined at once for the Coal River.* If these consequences steadily followed these gradations of conviction, they would soon be understood by the felonious world at home. At present, the prosperity of the best convicts is considered to be attainable by all; and transportation to another hemisphere is looked upon as the renovation of fallen fortunes, and the passport to wealth and power.

Another circumstance, which destroys all idea of punishment in transportation to New South Wales, is the enormous expense which that settlement would occasion, if it really was made a place of punishment. A little wicked tailor arrives, of no use to the architectural projects of the Governor. He is turned over to a settler, who leases this sartorial Borgia his liberty for five shillings per week, and allows him to steal and snip, what, when, and where he can. The excuse for this mockery of all law and justice is, that the expense of his maintenance is saved to the Government at home. But the expense is not saved to the country at large. The nefarious needleman writes home, that he is as comfortable as a finger in a thimble! that though a fraction only of humanity, he has several wives, and is filled every day with rum and kangaroo. This, of course, is not lost upon the shop-board; and, for the saving of fifteen pence per

* This practice is now resorted to.

day, the foundation of many criminal tailors is laid. What is true of tailors, is true of tinkers and all other trades. The chances of escape from labour, and of manumission in the Bay, we may depend upon it, are accurately reported, and perfectly understood in the flash-houses of St. Giles; and, while Earl Bathurst is full of jokes and joy, public morals are thus sapped to their foundation.

GAME LAWS. (E. REVIEW, 1823.)

A Letter to the Chairman of the Committee of the House of Commons, on the Game Laws. By the Hon. and Rev. William Herbert. Ridgway, 1823.

ABOUT the time of the publication of this little pamphlet of Mr. Herbert, a Committee of the House of Commons published a Report on the Game Laws, containing a great deal of very curious information respecting the sale of game, an epitome of which we shall now lay before our readers. The country higglers who collect poultry, gather up the game from the depôts of the poachers, and transmit it in the same manner as poultry, and in the same packages, to the London poulterers, by whom it is distributed to the public ; and this traffic is carried on (as far as game is concerned) even from the distance of Scotland. The same business is carried on by the porters of stage coaches ; and a great deal of game is sold clandestinely by lords of manors, or by gamekeepers, without the knowledge of lords of manors ; and principally, as the evidence states, from Norfolk and Suffolk, the great schools of steel traps and spring guns. The supply of game, too, is proved to be quite as regular as the supply of poultry ; the number of hares and partridges supplied rather exceeds that of pheasants ; but any description of game may be had to any amount. Here is a part of the evidence.

‘ Can you at any time procure any quantity of game ? I have no doubt of it. — If you were to receive almost an unlimited order, could you execute it ? Yes, I would supply

the whole city of London, any fixed day once a week, all the year through, so that every individual inhabitant should have game for his table. — Do you think you could procure a thousand pheasants? Yes; I would be bound to produce *ten thousand* a week. — You would be bound to provide every family in London with a dish of game? Yes; a partridge, or a pheasant, or a hare, or a grouse, or something or other. — How would you set about doing it? I should, of course, request the persons with whom I am in the habit of dealing, to use their influence to bring me what they could by a certain day; I should speak to the dealers and the mail-guards, and coachmen, to produce a quantity; and I should send to my own connections in one or two manors where I have the privilege of selling for those gentleman; and should send to Scotland to say, that every week the largest quantity they could produce was to be sent. Being but a petty salesman, I sell a very small quantity; but I have had about 4000 head direct from one man. — Can you state the quantity of game which has been sent to you during the year? No; I may say, perhaps, 10,000 head; mine is a limited trade; I speak comparatively to that of others; I only supply private families.' — *Report*, p. 20.

Poachers who go out at night cannot, of course, like regular tradesmen, proportion the supply to the demand, but having once made a contract, they kill all they can; and hence it happens that the game market is sometimes very much overstocked, and great quantities of game either thrown away, or disposed of by Irish hawkers to the common people at very inferior prices.

'Does it ever happen to you to be obliged to dispose of poultry at the same low prices you are obliged to dispose of game? It depends upon the weather; often when there is a considerable quantity on hand, and owing to the weather, it will not keep till the following day, I am obliged to take any price that is offered; but we can always turn either poultry or game into some price or other; and if it was not for the

Irish hawkers, hundreds and hundreds of heads of game would be spoiled and thrown away. It is out of the power of any person to conceive for one moment the quantity of game that is hawked in the streets. I have had opportunity more than other persons of knowing this; for I have sold, I may say, more game than any other person in the city; and we serve hawkers indiscriminately, persons who come and purchase probably six fowls or turkies and geese, and they will buy heads of game with them.' — *Report*, p. 22.

Live birds are sent up as well as dead; eggs as well as birds. The price of pheasants' eggs last year was 8s. per dozen; of partridges' eggs, 2s. The price of hares was from 3s. to 5s. 6d.; of partridges, from 1s. 6d. to 2s. 6d.; of pheasants, from 5s. to 5s. 6d. each, and sometimes as low as 1s. 6d.

'What have you given for game this year? It is very low indeed; I am sick of it; I do not think I shall ever deal again. We have got game this season as low as half a crown a brace (birds), and pheasants as low as 7s. a brace. It is so plentiful, there has been no end to spoiling it this season. It is so plentiful, it is of no use. In war time it was worth having; then they fetched 7s. and 8s. a brace.' — *Report*, p. 33.

All the poulterers, too, even the most respectable, state, that it is absolutely necessary they should carry on this illegal traffic in the present state of the game laws; because their regular customers for poultry would infallibly leave any poulterer's shop from whence they could not be supplied with game.

'I have no doubt that it is the general wish at present of the trade not to deal in the article; but they are all, of course, compelled from their connexions. If they cannot get game from one person, they can from another.

'Do you believe that poulterers are not to be found who

would take out licenses, and would deal with those very persons, for the purposes of obtaining a greater profit than they would have dealing as you would do? I think the poulterers in general are a respectable set of men, and would not countenance such a thing; they feel now that they are driven into a corner; that there may be men who would countenance irregular proceedings, I have no doubt.—Would it be their interest to do so, considering the penalty? No, I think not. The poulterers are perfectly well aware that they are committing a breach of the law at present. — Do you suppose that those persons, respectable as they are, who are now committing a breach of the law, would not equally commit that breach if the law were altered? No, certainly not; at present it is so connected with their business that they cannot help it. — You said just now, that they were driven into a corner; what did you mean by that? We are obliged to aid and abet those men who commit those depredations, because of the constant demand for game, from different customers whom we supply with poultry. — Could you carry on your business as a poulterer, if you refused to supply game? By no means; because some of the first people in the land require it of me.’ — *Report*, p. 15.

When that worthy Errorist, Mr. Bankes, brought in his bill of additional severities against poachers, there was no man of sense and reflection who did not anticipate the following consequences of the measure.

‘Do you find that less game has been sold in consequence of the bill rendering it penal to sell game? Upon my word, it did not make the slightest difference in the world. — Not immediately after it was made? No; I do not think it made the slightest difference. — It did not make the slightest sensation? No, I never sold a bird less. — Was not there a resolution of the poulterers not to sell game? I was secretary to that committee. — What was the consequence of that resolution? A great deal of ill blood in the trade. One gentleman who just left the room did not come into my

ideas. I never had a head of game in my house; all my neighbours sold it; and as we had people on the watch, who were ready to watch it into the houses, it came to this, we were prepared to bring our actions against certain individuals, after sitting, perhaps, from three to four months every week, which we did at the Crown and Anchor in the Strand, but we did not proceed with our actions, to prevent ill blood in the trade. We regularly met, and, as we conceived at the time, formed a committee of the most respectable of the trade. I was secretary of that committee. The game was sold in the city, in the vicinity of the Royal Exchange, cheaper than ever was known, because the people at our end of the town were afraid. I, as a point of honour, never had it in my house. I never had a head of game in my house that season. — What was the consequence? I lost my trade, and gave offence to gentlemen: a nobleman's steward, or butler, or cook, treated it as contumely; "Good God! what is the use of your running your head against the wall?" — You were obliged to begin the trade again? Yes, and sold more than ever.' — *Report*, p. 18.

These consequences are confirmed by the evidence of every person before the Committee.

All the evidence is very strong as to the fact, that dealing in game is not discreditable; that there are a great number of respectable persons, and, among the rest, the first poulterers in London, who buy game knowing it to have been illegally procured, but who would never dream of purchasing any other article procured by dishonesty.

'Are there not, to your knowledge, a great many people in this town who deal in game, by buying or selling it, that would not on any account buy or sell stolen property? Certainly; there are many capital tradesmen, poulterers, who deal in game, that would have nothing to do with stolen property; and yet I do not think there is a poulterer's shop in London, where they could not get game, if they wanted it.—

Do you think any discredit attaches to any man in this town for buying or selling game? I think none at all; and I do not think that the men to whom I have just referred would have any thing to do with stolen goods. — Would it not, in the opinion of the inhabitants of London, be considered a very different thing dealing in stolen game, or stolen poultry? Certainly. — The one would be considered disgraceful, and the other not? Certainly; they think nothing of dealing in game; and the farmers in the country will not give information; they will have a hare or two of the very men who work for them, and they are afraid to give us information.' — *Report*, p. 31.

The evidence of Daniel Bishop, one of the Bow Street officers, who has been a good deal employed in the apprehension of poachers, is curious and important, as it shows the enormous extent of the evil, and the ferocious spirit which the game laws engender in the common people. 'The poachers,' he says, 'came 16 miles. The whole of the village from which they were taken were poachers; the constable of the village, and the shoemaker, and other inhabitants of the village.' I fetched one man 22 miles. There was the son of a respectable gardener, one of these was a sawyer, and another a baker, who kept a good shop there. If the village had been alarmed, we should have had some mischief; but we were all prepared with fire arms. If poachers have a spite with the gamekeeper, that would induce them to go out in numbers to resist him. This party I speak of had something in their hats to distinguish them. They take a delight in setting to with the gamekeepers; and talk it over afterwards how they served so and so. They fought with the but-ends of their guns at Lord Howe's; they beat the gamekeepers shockingly.' — 'Does it occur to you (Bishop is asked) to have had more applications, and to have detected

more persons this season than in any former one? Yes; I think within four months there have been twenty-one transported that I have been at the taking of, and through one man turning evidence in each case, and without that they could not have been identified; the gamekeepers could not, or would not, identify them. The poachers go to the public house and spend their money; if they have a good night's work, they will go and get drunk with the money. The gangs are connected together at different public houses, just like a club at a public house; they are all sworn together. If the keeper took one of them, they would go and attack him for so doing.'

Mr. Stafford, chief clerk of Bow Street, says, 'All the offences against the game laws which are of an atrocious description I think are generally reported to the public office in Bow Street, more especially in cases where the keepers have either been killed, or dangerously wounded, and the assistance of an officer from Bow Street is required. The applications have been much more numerous of late years* than they were formerly. Some of them have been cases of murder; but I do not think many have amounted to murder. There are many instances in which keepers have been very ill treated—they have been wounded, skulls have been fractured, and bones broken; and they have been shot at. A man takes an hare, or a pheasant, with a very different feeling from that with

* It is only of late years that men have been transported for shooting at night. There are instances of men who have been transported at the Sessions for night poaching, who made no resistance at all when taken; but then their characters as old poachers weighed against them—characters estimated probably by the very lords of manors who had lost their game. This disgraceful law is the occasion of all the murders committed for game.

which he would take a pigeon or a fowl out of a farm-yard. The number of persons that assemble together is more for the purpose of protecting themselves against those that may apprehend them, than from any idea that they are actually committing depredation upon the property of another person; they do not consider it as property. I think there is a sense of morality and a distinction of crime existing in the men's minds, although they are mistaken about it. Men feel that if they go in a great body together, to break into an house, or to rob a person, or to steal his poultry, or sheep, they are committing a crime against that man's property; but I think with respect to the game, they do not feel that they are doing any thing which is wrong; but think they have committed no crime when they have done the thing, and their only anxiety is to escape detection.' In addition, Mr. Stafford states that he remembers not *one single conviction under Mr. Bankes's Act against buying game*; and not one conviction for buying or selling game within the last year has been made at Bow Street.

The inferences from these facts are exactly as we predicted, and as every man of common sense must have predicted — that to prevent the sale of game is absolutely impossible. If game is plentiful, and cannot be obtained at any lawful market, an illicit trade will be established, which it is utterly impossible to prevent by any increased severity of the laws. There never was a more striking illustration of the necessity of attending to public opinion in all penal enactments. Mr. Bankes (a perfect representative of all the ordinary notions about forcing mankind by pains and penalties) took the floor. To buy a partridge (though still considered as inferior to murder) was visited with

the very heaviest infliction of the law ; and yet, though game is sold as openly in London as apples and oranges, though three years have elapsed since this legislative mistake, the officers of the police can hardly recollect a single instance where the information has been laid, or the penalty levied : and why ? because every man's feelings and every man's understanding tell him, that it is a most absurd and ridiculous tyranny to prevent one man, who has more game than he wants, from exchanging it with another man, who has more money than he wants — because magistrates will not (if they can avoid it) inflict such absurd penalties — because even common informers know enough of the honest indignation of mankind, and are too well aware of the coldness of pump and pond to act under the bill of the Lycurgus of Corfe Castle.

The plan now proposed is, to undersell the poacher, which may be successful or unsuccessful ; but the threat is, if you attempt this plan there will be no game — and if there is no game, there will be no country gentlemen. We deny every part of this enthymeme — the last proposition as well as the first. We really cannot believe that all our rural mansions would be deserted, although no game was to be found in their neighbourhood. Some come into the country for health, some for quiet, for agriculture, for economy, from attachment to family estates, from love of retirement, from the necessity of keeping up provincial interests, and from a vast variety of causes. Partridges and pheasants, though they form nine tenths of human motives, still leave a small residue, which may be classed under some other head. Neither are a great proportion of those whom the love of shooting brings into the country of the smallest value or im-

portance to the country. A Colonel of the Guards, the second son just entered at Oxford, three diners out from Piccadilly — Major Rock, Lord John, Lord Charles, the Colonel of the regiment quartered at the neighbouring town, two Irish Peers, and a German Baron; — if all this honourable company proceed with fustian jackets, dog-whistles, and chemical inventions, to a solemn destruction of pheasants, how is the country benefited by their presence? or how would earth, air, or sea, be injured by their annihilation? There are certainly many valuable men brought into the country by a love of shooting, who, coming there for that purpose, are useful for many better purposes; but a vast multitude of shooters are of no more service to the country than the ramrod which condenses the charge, or the barrel which contains it. We do not deny that the annihilation of the game laws would thin the aristocratical population of the country; but it would not thin that population so much as is contended; and the loss of many of the persons so banished would be a good, rather than a misfortune. At all events, we cannot at all comprehend the policy of alluring the better classes of society into the country, by the temptation of petty tyranny and injustice, or of monopoly in sports. How absurd it would be to offer to the higher orders the exclusive use of peaches, nectarines, and apricots, as the premium of rustication — to put vast quantities of men into prison as apricot eaters, apricot buyers, and apricot sellers — to appoint a regular day for beginning to eat, and another for leaving off — to have a lord of the manor for green gages — and to rage with a penalty of five pounds against the unqualified eater of the gage! And yet the privilege of shooting a set of wild poultry is stated to be the bonus for the residence of country gentlemen.

As far as this immense advantage can be obtained without the sacrifice of justice and reason, well and good—but we would not oppress any order of society, or violate right and wrong, to obtain any population of squires, however dense. It is the grossest of all absurdities to say the present state of the law is absurd and unjust; but it must not be altered, because the alteration would drive gentlemen out of the country! If gentlemen cannot breathe fresh air without injustice, let them putrefy in Cranborne Alley. Make just laws, and let squires live and die where they please.

The evidence collected in the House of Commons respecting the Game Laws is so striking and so decisive against the gentlemen of the trigger, that their only resource is to represent it as not worthy of belief. But why not worthy of belief? It is not stated what part of it is incredible. Is it the plenty of game in London for sale? the unfrequency of convictions? the occasional but frequent excess of supply above demand in an article supplied by stealing? or its destruction when the sale is not without risk, and the price extremely low? or the readiness of grandees to turn the excess of their game into fish or poultry? All these circumstances appear to us so natural and so likely, that we should, without any evidence, have had little doubt of their existence. There are a few absurdities in the evidence of one of the poulterers; but, with this exception, we see no reason whatever for impugning the credibility and exactness of the mass of testimony prepared by the Committee.

It is utterly impossible to teach the common people to respect property in animals bred the possessor knows not where—which he cannot recognise by any mark, which may leave him the next moment,

which are kept, not for his profit, but for his amusement. Opinion never will be in favour of such property ; if the *animus furandi* exists, the propensity will be gratified by poaching. It is in vain to increase the severity of the protecting laws. They make the case weaker, instead of stronger ; and are more resisted and worse executed, exactly in proportion as they are contrary to public opinion : — the case of the game laws is a memorable lesson upon the philosophy of legislation. If a certain degree of punishment does not cure the offence, it is supposed, by the Bankes' School, that there is nothing to be done but to multiply this punishment by two, and then again and again, till the object is accomplished. The efficient maximum of punishment, however, is not what the Legislature chooses to enact, *but what the great mass of mankind think the maximum ought to be*. The moment the punishment passes this Rubicon, it becomes less and less, instead of greater and greater. Juries and Magistrates will not commit — informers* are afraid of public indignation — poachers will not submit to be sent to Botany Bay without a battle — blood is shed for pheasants — the public attention is called to this preposterous state of the law — and even ministers (whom nothing pesters so much as the interests of humanity) are at last compelled to come

* There is a remarkable instance of this in the new Turnpike Act. The penalty for taking more than the legal number of outside passengers is ten pounds per head, if the coachman is in part or wholly the owner. This will rarely be levied : because it is too much. A penalty of 100*l.* would produce perfect impunity. The maximum of practical severity would have been about five pounds. Any magistrate would cheerfully levy this sum : while doubling it will produce reluctance in the Judge, resistance in the culprit, and unwillingness in the informer.

forward and do what is right. Apply this to the game laws. It was before penal to sell game : within these few years, it has been made penal to buy it. From the scandalous cruelty of the law, night poachers are transported for seven years. And yet, never was so much game sold, or such a spirit of ferocious resistance excited to the laws. One fourth of all the commitments in Great Britain are for offences against the game laws. There is a general feeling, that some alteration must take place — a feeling not only among Reviewers, who never see nor eat game, but among the double-barrelled, shot-belted members of the House of Commons, who are either alarmed or disgusted by the vice and misery which their cruel laws and childish passion for amusement are spreading among the lower orders of mankind.

It is said, ‘ In spite of all the game sold, there is game enough left ; let the laws therefore remain as they are ; ’ and so it was said formerly, ‘ There is sugar enough ; let the slave trade remain as it is.’ But at what expense of human happiness is this quantity of game or of sugar, and this state of poacher law and slave law, to remain ! The first object of a good government is not that rich men should have their pleasures in perfection, but that all orders of men should be good and happy ; and if crowded covies and chuckling cock-pheasants are only to be procured by encouraging the common people in vice, and leading them into cruel and disproportionate punishment, it is the duty of the government to restrain the cruelties which the country members, in reward for their assiduous loyalty, have been allowed to introduce into the game laws.

The plan of the new bill (long since anticipated,

in all its provisions, by the acute author of the pamphlet before us,) is, that the public at large should be supplied by persons licensed by magistrates, and that all qualified persons should be permitted to sell their game to these licensed distributors; and there seems a fair chance that such a plan would succeed. The questions are, Would sufficient game come into the hands of the licensed salesman? Would the licensed salesman confine himself to the purchase of game from qualified persons? Would buyers of game purchase elsewhere than from the licensed salesman? Would the poacher be undersold by the honest dealer? Would game remain in the same plenty as before? It is understood that the game laws are to remain as they are; with this only difference, that the qualified man can sell to the licensed man, and the licentiate to the public.

It seems probable to us, that vast quantities of game would, after a little time, find their way into the hands of licensed poulterers. Great people are very often half eaten up by their establishments. The quantity of game killed in a large shooting party is very great; to eat it is impossible, and to dispose of it in presents very troublesome. The preservation of game is very expensive; and, when it could be bought, it would be no more a compliment to send it as a present than it would be to send geese and fowls. If game were sold, very large shooting establishments might be made to pay their own expenses. The shame is made by the law; there is a disgrace in being detected and fined. If that barrier were removed, superfluous partridges would go to the poulterers as readily as superfluous venison does to the venison butcher — or as a gentleman sells the corn and mutton off his farm which he cannot con-

sume. For these reasons, we do not doubt that the shops of licensed poulterers would be full of game in the season ; and this part of the argument, we think, the arch-enemy, Sir John Shelley, himself would concede to us.

The next question is, From whence they would procure it? A license for selling game, granted by country magistrates, would, from their jealousy upon these subjects, be granted only to persons of some respectability and property. The purchase of game from unqualified persons would, of course, be guarded against by very heavy penalties, both personal and pecuniary ; and these penalties would be inflicted, because opinion would go with them. 'Here is a respectable tradesman,' it would be said, 'who might have bought as much game as he pleased in a lawful manner, but who, in order to increase his profits by buying it a little cheaper, has encouraged a poacher to steal it.' Public opinion, therefore, would certainly be in favour of a very strong punishment ; and a licensed vender of game, who exposed himself to these risks, would expose himself to the loss of liberty, property, character, and license. The persons interested to put a stop to such a practice, would not be the paid agents of Government, as in cases of smuggling ; but all the gentlemen of the country, the customers of the tradesman for fish, poultry, or whatever else he dealt in, would have an interest in putting down the practice. In all probability, the practice would become disreputable, like the purchase of stolen poultry ; and this would be a stronger barrier than the strongest laws. There would, of course, be some exceptions to this statement. A few shabby people would, for the chance of gaining sixpence, incur the risk of ruin and disgrace ; but

it is probable that the general practice would be otherwise.

For the same reasons, the consumers of game would rather give a little more for it to a licensed poulterer, than expose themselves to severe penalties by purchasing from poachers. The great mass of London consumers are supplied now, not from shabby people, in whom they can have no confidence — not from hawkers and porters, but from respectable tradesmen, in whose probity they have the most perfect confidence. Men will brave the law for pheasants, but not for sixpence or a shilling ; and the law itself is much more difficult to be braved, when it allows pheasants to be bought at some price, than when it endeavours to render them utterly inaccessible to wealth. All the licensed salesmen, too, would have a direct interest in stopping the contraband trade of game. They would lose no character in doing so ; their informations would be reasonable and respectable.

If all this is true, the poacher would have to compete with a great mass of game fairly and honestly poured into the market. He would be selling with a rope about his neck, to a person who bought with a rope about his neck ; his description of customers would be much the same as the customers for stolen poultry, and his profits would be very materially abridged. At present, the poacher is in the same situation as the smuggler would be, if rum and brandy could not be purchased of any fair trader. The great check to the profits of the smuggler are, that, if you want his commodities, and will pay an higher price, you may have them elsewhere without risk or disgrace. But forbid the purchase of these luxuries at any price. Shut up the shop of the brandy merchant, and you render the trade of the smuggler

of incalculable value. The object of the intended bill is, to raise up precisely the same competition to the trade of the poacher, by giving the public an opportunity of buying lawfully and honestly the tempting articles in which he now deals exclusively. Such an improvement would not, perhaps, altogether annihilate his trade ; but it would, in all probability, act as a very material check upon it.

The predominant argument against all this is, that the existing prohibition against buying game, though partially violated, does deter many persons from coming into the market ; that if this prohibition were removed, the demand for game would be increased, the legal supply would be insufficient, and the residue would, and must be, supplied by the poacher, whose trade would, for these reasons, be as lucrative and flourishing as before. But it is only a few years since the purchase of game has been made illegal : and the market does not appear to have been at all narrowed by the prohibition ; not one head of game the less has been sold by the poulterers ; and scarcely one single conviction has taken place under that law. How, then, would the removal of the prohibition, and the alteration of the law, extend the market, and increase the demand, when the enactment of the prohibition has had no effect in narrowing it ? But if the demand increases, why not the legal supply also ? Game is increased upon an estate by feeding them in winter, by making some abatement to the tenants for guarding against depredations, by a large apparatus of gamekeepers and spies — in short, by expense. But if this pleasure of shooting, so natural to country gentlemen, is made to pay its own expenses, by sending superfluous game to market, more men, it is reasonable to suppose, will thus preserve and augment

their game. The love of pleasure and amusement will produce in the owners of game that desire to multiply game, which the love of gain does in the farmer to multiply poultry. Many gentlemen of small fortune will remember, that they cannot enjoy to any extent this pleasure without this resource; that the legal sale of poultry will discountenance poaching; and they will open an account with the poulterer, not to get richer, but to enjoy a great pleasure without an expense, in which, upon other terms, they could not honourably and conscientiously indulge. If country gentlemen of moderate fortune will do this (and we think after a little time they will do it), game may be multiplied and legally supplied to any extent. Another keeper, and another bean-stack, will produce their proportional supply of pheasants. The only reason why the great lord has more game per acre than the little squire is, that he spends more money per acre to preserve it.

For these reasons, we think the experiment of legalising the sale of game ought to be tried. The game laws have been carried to a pitch of oppression which is a disgrace to the country. The prisons are half filled with peasants, shut up for the irregular slaughter of rabbits and birds — a sufficient reason for killing a weazle, but not for imprisoning a man. Something should be done; it is disgraceful to a Government to stand by, and see such enormous evils without interference. It is true, they are not connected with the struggles of party; but still, the happiness of the common people, whatever gentlemen may say, ought every now and then to be considered.

CRUEL TREATMENT OF UNTRIED PRISONERS. (E. REVIEW, 1824.)

1. *A Letter to the Right Honourable Robert Peel, one of his Majesty's Principal Secretaries of State, &c. &c. &c. on Prison Labour.* By John Headlam, M. A., Chairman of the Quarter Sessions for the North Riding of the County of York. London. Hatchard and Son. 1823.
2. *Information and Observations, respecting the proposed Improvements at York Castle.* Printed by Order of the Committee of Magistrates, September, 1823.

It has been the practice, all over England, for these last fifty years *, not to *compel* prisoners to work before guilt was proved. Within these last three or four years, however, the magistrates of the North Riding of Yorkshire, considering it improper to support any idle person at the county expense, have resolved, that prisoners committed to the House of Correction for trial, and requiring county support, should work for their livelihood; and no sooner was the tread-mill brought into fashion, than that machine was adopted in the North Riding as the species of labour by which such prisoners were to earn their maintenance. If these magistrates did not consider themselves empowered to burden the county rates for the support of prisoners before trial, who would not contribute to support themselves, it does not appear, from the publication of the Reverend Chairman of the Sessions, that any opinions of Counsel

* Headlam, p. 6.

were taken as to the legality of so putting prisoners to work, or of refusing them maintenance if they chose to be idle ; but the magistrates themselves decided that such was the law of the land. Thirty miles off, however, the law of the land was differently interpreted ; and in the Castle of York large sums were annually expended in the maintenance of idle prisoners before trial, and paid by the different Ridings, without remonstrance or resistance.*

Such was the state of affairs in the county of York before the enactment of the recent prison bill. After that period, enlargements and alterations were necessary in the county jail ; and it was necessary also for these arrangements, that the magistrates should know whether or not they were authorised to maintain such prisoners at the expense of the county, as, being accounted able and unwilling to work, still claimed the county allowance. To questions proposed upon these points to three barristers the following answers were returned : —

‘2dly, I am of opinion, that the Magistrates are empowered, and are compelled to maintain, at the expense of the County, such prisoners *before* trial as are able to work, unable to maintain themselves, and not willing to work ; and that they have not the power of compelling such prisoners to work, either at the tread-mill, or any other species of labour.

‘ J. GURNEY.

‘ *Lincoln’s Inn Fields, 2d September, 1823.*’

‘ I think the magistrates are empowered, under the tenth

* We mention the case of the North Riding, to convince our readers that the practice of condemning prisoners to work before trial has existed in some parts of England ; for in questions like this we have always found it more difficult to prove the existence of the facts, than to prove that they were mischievous and unjust.

section (explained by the 37th and 38th), to maintain prisoners before trial, who are able to work, unable to maintain themselves by their own means, or by employment which they themselves can procure, and not willing to work; and I think also, that the words "shall be lawful," in that section, do not leave them a discretion on the subject, but are compulsory. *Such* prisoners can only be employed in prison labour with *their own consent*; and it cannot be intended that the Justices may force such consent, by withholding from them the necessaries of life, if they do not give it. Even those who are convicted cannot be employed at the treadmill, which I consider as a species of *severe* labour.

‘J. PARKE.

‘September 4th, 1823.’

‘2dly, As to the point of compelling prisoners confined on criminal charges, and receiving relief from the magistrates, to reasonable labour; to that of the tread-mill for instance, in which, when properly conducted, there is nothing severe or unreasonable; had the question arisen prior to the late Act, I should with confidence have said, I thought the magistrates had a compulsory power in this respect. Those who cannot live without relief in a jail, cannot live without labour out of it. Labour then is their avocation. Nothing is so injurious to the morals and habits of the prisoner as the indolence prevalent in prisons; nothing so injurious to good order in the prison. The analogy between this and other cases of public support is exceedingly strong; one may almost consider it a general principle, that those who live at the charge of the community shall, as far as they are able, give the community a compensation through their labour. But the question does not depend on mere abstract reasoning. The stat. 19 Ch. 2. c. 4. sec. 1. entitled, an "Act for relief of poor prisoners, and setting them on work," speaks of persons committed for felony and other misdemeanors to the common jail, who many times *perish before trial*; and then proceeds as to setting poor prisoners on work. Then stat. 31 G. 3. c. 46. sec. 13. orders money to be raised for such prisoners of every description, as, being confined within the

said jails, or other places of confinement, *are not able to work*. A late stat. (52 G. 3. c. 160.) orders parish relief to such debtors on mesne process in jails, not county jails, as are not able to support themselves; but says nothing of finding or compelling work. Could it be doubted, that if the Justices were to provide work, and the prisoner refused it, such debtors might, like any other parish paupers, be refused the relief mentioned by the statute? In all the above cases, the authority to insist on the prisoner's labour, as the condition and consideration of relief granted him, is, I think, either expressed or necessarily implied; and thus, viewing the subject, I think it was in the power of magistrates, prior to the late statute, to compel prisoners, subsisting in all or in part on public relief, to work at the tread-mill. The objection commonly made is, that prisoners prior to trial, are to be accounted innocent, and to be detained, merely that they may be secured for trial; to this the answer is obvious, that the labour is neither meant as a punishment or a disgrace, but simply as a compensation for the relief, at their own request, afforded them. Under the present statute, I, however, have no doubt, that poor prisoners are entitled to public support, and that there can be no compulsory labour prior to trial. The two statutes adverted to (19 Ch. 2. c. 4. and 31 G. 3.) are, as far as this subject is concerned, expressly repealed. The Legislature then had in contemplation the existing power of magistrates to order labour before trial, and having it in contemplation, repeals it; substituting (sec. 38.) a power of setting to labour *only sentenced persons*. The 13th rule, too, (p. 777.) speaks of labour as connected with convicted prisoners, and sec. 37. speaks in general terms of persons committed for trial, as labouring with their own consent. In opposition to these clauses, I think it impossible to speak of implied power, or power founded on general reasoning or analogy. So strong, however, are the arguments in favour of a more extended authority in Justices of the Peace, that it is scarcely to be doubted, that Parliament, on a calm revision of the subject, would be willing to restore, in a more distinct manner than it has hitherto been enacted, a general discretion on the subject. Were this done, there is

one observation I will venture to make, which is, that should some unfortunate association of ideas render the tread-mill a matter of ignominy to common feelings, an enlightened magistracy would scarcely compel an untried prisoner to a species of labour which would disgrace him in his own mind and in that of the public.

‘ S. W. NICOLL.

‘ *York, August 27th, 1823.*’

In consequence, we believe, of these opinions, the North Riding magistrates, on the 13th of October (the new bill commencing on the 1st of September), passed the following resolution:— ‘ That persons committed for trial, who are able to work, and have the means of employment offered them by the visiting magistrates, by which they may earn their support, but who obstinately refuse to work, shall be allowed bread and water only.’

By this resolution they admit, of course, that the counsel are right in their interpretation of the present law ; and that magistrates are forced to maintain prisoners before trial who do not choose to work. The magistrates say, however, by their resolution, that the food shall be of the plainest and humblest kind, bread and water ; meaning, of course, that such prisoners should have a sufficient quantity of bread and water, or otherwise the evasion of the law would be in the highest degree mean and reprehensible. But it is impossible to suppose any such thing to be intended by gentlemen so highly respectable. Their intention is not that idle persons before trial shall starve, but that they shall have barely enough of the plainest food for the support of life and health.

Mr. Headlam has written a pamphlet, to show that the old law was very reasonable and proper ;

that it is quite right that prisoners before trial, who are able to support themselves, but unwilling to work, should be compelled to work, and at the tread-mill, or that all support should be refused them. We are entirely of an opposite opinion ; and maintain, that it is neither legal nor expedient to *compel* prisoners before trial to work at the tread-mill, or at any species of labour, and that those who refuse to work should be supported upon a plain healthy diet. We impute no sort of blame to the magistrates of the North Riding, or to Mr. Headlam, their Chairman. We have no doubt but that they thought their measures the wisest and the best for correcting evil, and that they adopted them in pursuance of what they thought to be their duty. Nor do we enter into any discussion with Mr. Headlam, as Chairman of a Quarter Sessions, but as the writer of a pamphlet. It is only in his capacity of author that we have any thing to do with him. In answering the arguments of Mr. Headlam, we shall notice, at the same time, a few other observations commonly resorted to in defence of a system which we believe to be extremely pernicious, and pregnant with the worst consequences ; and so thinking, we contend against it, and in support of the law as it now stands.

We will not dispute with Mr. Headlam, whether his exposition of the old law is right or wrong ; because time cannot be more unprofitably employed than in hearing gentlemen who are not lawyers discuss points of law. We dare to say Mr. Headlam knows as much of the laws of his country as magistrates in general do ; but he will pardon us for believing, that for the moderate sum of three guineas a much better opinion of what the law is now, or was then, can be purchased, than it is in the power

of Mr. Headlam or of any county magistrate, to give for nothing — *Cuilibet in arte sua credendum est*. It is concerning the expediency of such laws, and upon that point alone, that we are at issue with Mr. Headlam ; and do not let this gentleman suppose it to be any answer to our remarks to state what is done in the prison in which he is concerned, now the law is altered. The question is, whether he is right or wrong in his reasoning upon what the law *ought* to be ; we wish to hold out such reasoning to public notice, and think it important it should be refuted — doubly important, when it comes from an author, the leader of the Quorum, who may say with the pious Æneas, —

—— Quæque ipse miserrima vidi,
Et *quorum* pars magna fui.

If, in this discussion, we are forced to insist upon the plainest and most elementary truths, the fault is not with us, but with those who forget them ; and who refuse to be any longer restrained by those principles which have hitherto been held to be as clear as they are important to human happiness.

To begin, then, with the nominative case and the verb — we must remind those advocates for the treadmill, *a parte ante* (for with the millers *a parte post* we have no quarrel), that it is one of the oldest maxims of common sense, common humanity, and common law, to consider every man as innocent till he is proved to be guilty ; and not only to consider him to be innocent, but to treat him as if he was so ; to exercise upon his case not merely a barren speculation, but one which produces practical effects, and which secures to a prisoner the treatment of an honest, unpunished man. Now, to compel prisoners before

trial to work at the tread-mill, as the condition of their support, must, in a great number of instances, operate as a very severe punishment. A prisoner may be a tailor, a watchmaker, a bookbinder, a printer, totally unaccustomed to any such species of labour. Such a man may be cast into jail at the end of August*, and not tried till the March following, is it no punishment to such a man to walk up hill like a turnspit dog, in an infamous machine, for six months? and yet there are gentlemen who suppose that the common people do not consider this as punishment! — that the gayest and most joyous of human beings is a treader, untried by a jury of his countrymen, in the fifth month of lifting up the leg, and striving against the law of gravity, supported by the glorious information which he receives from the turnkey, that he has all the time been grinding flour on the other side of the wall! If this sort of exercise, necessarily painful to sedentary persons, is agreeable to persons accustomed to labour, then make it voluntary — give the prisoners their choice — give more money and more diet to those who can and will labour at the tread-mill, if the tread-mill (now so dear to magistrates) is a proper punishment for untried prisoners. The position we are contending against is, that all poor prisoners who are able to work should be put to work upon the tread-mill, the inevitable consequence of which practice is, a repetition of gross in-

* Mr. Headlam, as we understand him, would extend this labour to all poor prisoners before trial, in jails which are delivered twice a year at the Assizes, as well as to Houses of Correction delivered four times a year at the Sessions; *i. e.* not extend the labour, but refuse all support to those who refuse the labour — a distinction, but not a difference.

justice by the infliction of undeserved punishment ; for punishment, and severe punishment to such persons as we have enumerated, we must consider it to be.

But punishments are not merely to be estimated by pain to the limbs, but by the feelings of the mind. Gentlemen punishers are sometimes apt to forget that the common people have any mental feelings at all, and think, if body and belly are attended to, that persons under a certain income have no right to likes and dislikes. The labour of the tread-mill is irksome, dull, monotonous, and disgusting to the last degree. A man does not see his work, does not know what he is doing, what progress he is making ; there is no room for art, contrivance, ingenuity, and superior skill — all which are the cheering circumstances of human labour. The husbandman sees the field gradually subdued by the plough ; the smith beats the rude mass of iron by degrees into its meditated shape, and gives it its meditated utility ; the tailor accommodates his parallelogram of cloth to the lumps and bumps of the human body, and, holding it up, exclaims, ‘ This will contain the lower moiety of an human being.’ But the treader does nothing but tread ; he sees no change of objects, admires no new relation of parts, imparts no new qualities to matter, and gives to it no new arrangements and positions ; or if he does, he sees and knows it not, but is turned at once from a rational being, by a justice of peace, into a *primum mobile*, and put upon a level with a rush of water or a puff of steam. It is impossible to get gentlemen to attend to the distinction between raw and roasted prisoners, without which all discussion on prisoners is perfectly ridiculous. Nothing can be more excellent than this kind of labour for persons to whom you mean to make labour as irksome

as possible ; but for this very reason, it is the labour to which an untried prisoner ought not to be put.

It is extremely uncandid to say that a man is obstinately and incorrigibly idle, because he will not submit to such tiresome and detestable labour as that of the tread-mill. It is an old feeling among Englishmen that there is a difference between tried and untried persons, between accused and convicted persons. These old opinions were in fashion before this new magistrate's plaything was invented ; and we are convinced that many industrious persons, feeling that they have not had their trial, and disgusted with the nature of the labour, would refuse to work at the tread-mill, who would not be averse to join in any common and fair occupation. Mr. Headlam says, that labour may be a privilege as well as a punishment. So may taking physic be a privilege, in cases where it is asked for as a charitable relief, but not if it is stuffed down a man's throat whether he say yea or nay. Certainly labour is not necessarily a punishment : nobody has said it is so ; but Mr. Headlam's labour is a punishment, because it is irksome, infamous, unasked for, and undeserved. This gentleman however, observes, that committed persons *have offended the laws* ; and the sentiment expressed in these words is the true key to his pamphlet and his system—a perpetual tendency to confound the convicted and the accused.

‘ With respect to those sentenced to labour as a punishment, I apprehend there is no difference of opinion. All are agreed that it is a great defect in any prison where such convicts are unemployed. But as to all *other* prisoners, whether debtors, *persons committed for trial*, or convicts not sentenced to hard labour, if they have no means of subsisting themselves, and must, if discharged, either labour for their

livelihood or apply for parochial relief; it seems unfair to society at large, and especially to those who maintain themselves by honest industry, that those who, *by offending the laws, have subjected themselves to imprisonment*, should be lodged, and clothed, and fed, without being called upon for the same exertions which others have to use to obtain such advantages.' — *Headlam*, pp. 23, 24.

Now nothing can be more unfair than to say that such men have offended the laws. That is the very question to be tried, whether they have offended the laws or not? It is merely because this little circumstance is taken for granted, that we have any quarrel at all with Mr. Headlam and his school.

'I can make,' says Mr. Headlam, 'every delicate consideration for the rare case of a person perfectly innocent being committed to jail on suspicion of crime. Such person is deservedly an object of compassion, for having fallen under circumstances which subject him to be charged with crime, and, consequently, to be deprived of his liberty: but if he has been in the habit of labouring for his bread before his commitment, there does not appear to be any addition to his misfortune in being called upon to work for his subsistence in prison.' — *Headlam*, p. 24.

And yet Mr. Headlam describes this very punishment, which does not add to the misfortunes of an innocent man, to be *generally disagreeable, to be dull, irksome, to excite a strong dislike, to be a dull, monotonous labour, to be a contrivance which connects the idea of discomfort with a jail*, p. 36. So that Mr. Headlam looks upon it to be no increase of an innocent man's misfortunes, to be constantly employed upon a dull, irksome, monotonous labour, which excites a strong dislike, and connects the idea of discomfort with a jail. We cannot stop, or stoop to consider, whether beating hemp is more or less dignified than working in a mill. The simple rule is

this, whatever felons do, men not yet proved to be felons should not be compelled to do. It is of no use to look into laws become obsolete by alteration of manners. For these fifty years past, and before the invention of tread-mills, untried men were not put upon felons' work; but with the mill came in the mischief. Mr. Headlam asks, How can men be employed upon the ancient trades in a prison? — certainly they cannot; but are human occupations so few, and is the ingenuity of magistrates and jailers so limited, that no occupations can be found for innocent men, but those which are shameful and odious? Does Mr. Headlam really believe, that grown up and baptized persons are to be satisfied with such arguments, or repelled by such difficulties?

It is some compensation to an acquitted person, that the labour he has gone through unjustly in jail has taught him some trade, given him an insight into some species of labour in which he may hereafter improve himself; but Mr. Headlam's prisoner, after a verdict of acquittal, has learnt no other art than that of walking up hill; he has nothing to remember or recompense him but three months of undeserved and unprofitable torment. The verdict of the jury has pronounced him steady in his morals; the conduct of the justices has made him stiff in his joints.

But it is next contended by some persons, that the poor prisoner is not compelled to work, because he has the alternative of starving, if he refuses to work. You take up a poor man upon suspicion, deprive him of all his usual methods of getting his livelihood, and then giving him the first view of the tread-mill, he of the Quorum thus addresses him: — 'My amiable friend, we use no compulsion with untried prisoners. You are free as air till you are found guilty; only it is my

duty to inform you, as you have no money of your own, that the disposition to eat and drink which you have allowed you sometimes feel, and upon which I do not mean to cast any degree of censure, cannot possibly be gratified but by constant grinding in this machine. It has its inconveniences, I admit; but balance them against the total want of meat and drink, and decide for yourself. You are perfectly at liberty to make your choice, and I by no means wish to influence your judgment.' But Mr. Nicoll has a curious remedy for all this miserable tyranny; he says it is not meant as a punishment. But if I am conscious that I never have committed the offence, certain that I have never been found guilty of it, and find myself tost into the middle of an infernal machine, by the folly of those who do not know how to use the power intrusted to them, is it any consolation to me to be told, that it is not *intended* as a punishment, that it is a lucubration of justices, a new theory of prison-discipline, a valuable county experiment going on at the expense of my arms, legs, back, feelings, character, and rights? We must tie those prægustant punishers down by one question. Do you mean to inflict any degree of punishment upon persons merely for being suspected?—or at least any other degree of punishment than that without which criminal justice cannot exist, detention? If you do, why let any one out upon bail? For the question between us is not, how suspected persons are to be treated, and whether or not they are to be punished; but how suspected *poor* persons are to be treated, who want county support in prison. If to be suspected is deserving of punishment, then no man ought to be let out upon bail, but *every one* should be kept grinding from accusation to trial; and

so ought *all* prisoners to be treated for offences not bailable, and who do not want the county allowance. And yet no grinding philosopher contends, that all suspected persons should be put in the mill — but only those who are too poor to find bail, or buy provisions.

If there are, according to the doctrines of the millers, to be two punishments, the first for being suspected of committing the offence, and the second for committing it, there should be two trials as well as two punishments. Is the man really suspected, or do his accusers only pretend to suspect him? Are the suspecting of better character than the suspected? Is it a light suspicion which may be atoned for by grinding a peck a day? Is it a bushel case? or is it one deeply criminal, which requires the flour to be ground fine enough for French rolls? But we must put an end to such absurdities.

It is very untruly stated, that a prisoner, before trial, not compelled to work, and kept upon a plain diet, merely sufficient to maintain him in health, is better off than he was previous to his accusation; and it is asked, with a triumphant leer, whether the situation of any man ought to be improved, merely because he has become an object of suspicion to his fellow-creatures? This happy and fortunate man, however, is separated from his wife and family; his liberty is taken away; he is confined within four walls; he has the reflection that his family are existing upon a precarious parish support, that his little trade and property are wasting, that his character is become infamous, that he has incurred ruin by the malice of others, or by his own crimes, that in a few weeks he is to forfeit his life, or be banished from every thing he loves upon earth. This is the

improved situation, and the redundant happiness which requires the penal circumvolutions of the Justice's mill to cut off so unjust a balance of gratification, and bring him a little nearer to what he was before imprisonment and accusation. It would be just as reasonable to say, that an idle man in a fever is better off than a healthy man who is well and earns his bread. He may be better off if you look to the idleness alone, though that is doubtful; but is he better off if all the aches, agonies, disturbances, deliriums, and the nearness to death, are added to the lot?

Mr. Headlam's panacea for all prisoners before trial, is the tread-mill: we beg his pardon — for all *poor* prisoners; but a man who is about to be tried for his life, often wants all his leisure time to reflect upon his defence. The exertions of every man within the walls of a prison are necessarily crippled and impaired. What can a prisoner answer who is taken hot and reeking from the tread-mill, and asked what he has to say in his defence; his answer naturally is — 'I have been grinding corn instead of thinking of my defence, and have never been allowed the proper leisure to think of protecting my character and my life.' This is a very strong feature of cruelty and tyranny in the mill. We ought to be sure that every man has had the fullest leisure to prepare for his defence, that his mind and body have not been harassed by vexatious and compulsory employment. The public purchase, at a great price, legal accuracy, and legal talent, to accuse a man who has not, perhaps, one shilling to spend upon his defence. It is atrocious cruelty not to leave him full leisure to write his scarcely legible letters to his witnesses, and to use all the melancholy and feeble means

which suspected poverty can employ for its defence against the long and heavy arm of power.

A prisoner, upon the system recommended by Mr. Headlam, is committed, perhaps at the end of August, and brought to trial the March following; and, after all, the bill is either thrown out by the grand jury, or the prisoner is fully acquitted; and it has been found, we believe, by actual returns, that, of committed prisoners, about a half are actually acquitted, or their accusations dismissed by the grand jury. This may be very true, say the advocates of this system, but we know that many men who are acquitted are guilty. They escape through some mistaken lenity of the law, or some corruption of evidence; and as they have not had their deserved punishment after trial, we are not sorry they had it before. The English law says, better many guilty escape, than that one innocent man perish; but the humane notions of the mill are bottomed upon the principle, that all had better be punished lest any escape. They evince a total mistrust in the jurisprudence of the country, and say the results of trial are so uncertain, that it is better to punish all the prisoners before they come into Court. Mr. Headlam forgets that general rules are not beneficial in each individual instance, but beneficial upon the whole; that they are preserved because they do much more good than harm, though in some particular instances they do more harm than good; yet no respectable man violates them on that account, but holds them sacred for the great balance of advantage they confer upon mankind. It is one of the greatest crimes, for instance, to take away the life of a man; yet there are many men whose death would be a good to society, rather than an evil. Every good man

respects the property of others ; yet to take from a worthless miser, and to give it to a virtuous man in distress, would be an advantage. Sensible men are never staggered when they see the exception. They know the importance of the rule, and protect it most eagerly at the very moment when it is doing more harm than good. The plain rule of justice is, that no man should be punished till he is found guilty ; but because Mr. Headlam occasionally sees a bad man acquitted under this rule, and sent out unpunished upon the world, he forgets all the general good and safety of the principle is debauched by the exception, and applauds and advocates a system of prison discipline which renders injustice certain, in order to prevent it from being occasional.

The meaning of all preliminary imprisonment is, that the accused person should be forthcoming at the time of trial. It was never intended as a punishment. Bail is a far better invention than imprisonment, in cases where the heavy punishment of the offence would not induce the accused person to run away from any bail. Now, let us see the enormous difference this new style of punishment makes between two men, whose only difference is, that one is poor and the other rich. A and B are accused of some bailable offence. A has no bail to offer, and no money to support himself in prison, and takes, therefore his four or five months in the tread-mill. B gives bail, appears at his trial, and both are sentenced to two months imprisonment. In this case, the one suffers three times as much as the other for the same offence : but suppose A is acquitted and B found guilty,—the innocent man has then laboured in the tread-mill five months because he was poor, and the guilty man labours two months because he was rich.

We are aware that there must be, even without the tread-mill, a great and an inevitable difference between men (*in pari delicto*), some of whom can give bail, and some not ; but that difference becomes infinitely more bitter and objectionable, in proportion as detention before trial assumes the character of severe and degrading punishment.

If motion in the tread-mill was otherwise as fascinating as millers describe it to be, still the mere degradation of the punishment is enough to revolt every feeling of an untried person. It is a punishment consecrated to convicted felons — and it has every character that such punishment ought to have. An untried person feels at once, in getting into the mill, that he is put to the labour of the guilty ; that a mode of employment has been selected for him, which renders him infamous before a single fact or argument has been advanced to establish his guilt. If men are put into the tread-mill before trial, it is literally of no sort of consequence whether they are acquitted or not. Acquittal does not shelter them from punishment, for they have already been punished. It does not screen them from infamy, for they have already been treated as if they were infamous ; and the association of the tread-mill and crimes is not to be got over. This machine flings all the power of Juries into the hands of the magistrates, and makes every simple commitment more terrible than a conviction ; for, in a conviction, the magistrate considers whether the offence has been committed or not ; and does not send the prisoner to jail unless he think him guilty ; but in a simple commitment, a man is not sent to jail because the magistrate is convinced of his guilt, but because he thinks a fair question may be made to a Jury whether the accused person is guilty

or not. Still, however, the convicted and the suspected both go to the same mill; and he who is there upon the doubt, grinds as much flour as the other whose guilt is established by a full examination of conflicting evidence.

Where is the necessity for such a violation of common sense and common justice? Nobody asks for the idle prisoner before trial more than a very plain and moderate diet. Offer him, if you please, some labour which is less irksome, and less infamous than the tread-mill, — bribe him by improved diet, and a share of the earnings; there will not be three men out of an hundred who would refuse such an invitation, and spurn at such an improvement of their condition. A little humane attention and persuasion, among men who ought, upon every principle of justice, to be considered as innocent, we should have thought much more consonant to English justice, and to the feelings of English magistrates, than the Rack and Wheel of Cubitt.*

Prison discipline is an object of considerable importance; but the common rights of mankind, and the common principles of justice, and humanity, and liberty, are of greater consequence even than prison discipline. Right and wrong, innocence, and guilt, must not be confounded, that a prison-fancying Justice may bring his friend into the prison and say, ‘Look what a spectacle of order, silence and decorum we have established here! no idleness, all grinding! — we produce a penny roll every second — our prison

* It is singular enough, that we use these observations in reviewing the pamphlet and system of a gentleman remarkable for the urbanity of his manners, and the mildness and humanity of his disposition.

is supposed to be the best regulated prison in England, — Cubitt is making us a new wheel of forty felon power, — look how white the flour is, all done by untried prisoners — as innocent as lambs!’ If prison discipline is to supersede every other consideration, why are pennyless prisoners alone to be put into the mill before trial. If idleness in jails is so pernicious, why not put all prisoners in the tread-mill, the rich as well as those who are unable to support themselves? Why are the debtors left out? If fixed principles are to be given up, and prisons turned into a plaything for magistrates, nothing can be more unpicturesque than to see one half of the prisoners looking on, talking, gaping, and idling, while their poorer brethren are grinding for dinners and suppers.

It is a very weak argument to talk of the prisoners earning their support, and the expense to a county of maintaining prisoners before trial, — as if any rational man could ever expect to gain a farthing by an expensive mill, where felons are the moving power, and justices the superintendants, or as if such a trade must not necessarily be carried on at a great loss. If it were just and proper that prisoners, before trial, should be condemned to the mill, it would be of no consequence whether the county gained or lost by the trade. But the injustice of the practice can never be defended by its economy; and the fact is, that it increases expenditure, while it violates principle. We are aware, that by leaving out repairs, alterations, and first costs, and a number of little particulars, a very neat account, signed by a jailor, may be made up, which shall make the mill a miraculous combination of mercantile speculation and moral improvement; but we are too old for all this.

We accuse nobody of intentional misrepresentation. This is quite out of the question with persons so highly respectable; but men are constantly misled by the spirit of system, and egregiously deceive themselves—even very good and sensible men.

Mr. Headlam compares the case of a prisoner before trial, claiming support, to that of a pauper claiming relief from his parish. But it seems to us that no two cases can be more dissimilar. The prisoner was no pauper before you took him up, and deprived him of his customers, tools, and market. It is by your act and deed that he is fallen into a state of pauperism; and nothing can be more preposterous, than first to make a man a pauper, and then to punish him for being so. It is true, that the apprehension and detention of the prisoner were necessary for the purposes of criminal justice; but the consequences arising from this necessary act cannot yet be imputed to the prisoner. He has brought it upon himself, it will be urged; but that remains to be seen, and will not be known till he is tried; and till it is known you have no right to take it for granted, and to punish him as if it were proved.

There seems to be in the minds of some gentlemen a notion, that when once a person is in prison, it is of little consequence how he is treated afterwards. The tyranny which prevailed, of putting a person in a particular dress before trial, now abolished by act of Parliament, was justified by this train of reasoning, the man has been rendered infamous by imprisonment. He cannot be rendered more so, dress him as you will. His character is not rendered worse by the tread-mill, than it is by being sent to the place where the tread-mill is at work. The substance of this way of thinking is, that when a fellow-creature

is in the frying pan, there is no harm in pushing him into the fire ; that a little more misery — a little more infamy—a few more links, are of no sort of consequence in a prison-life. If this monstrous style of reasoning extended to hospitals as well as prisons, there would be no harm in breaking the small bone of a man's leg, because the large one was fractured, or in peppering with small shot a person who was wounded with a cannon-ball. The principle is, because a man is very wretched, there is no harm in making him a little more so. The steady answer to all this is, that a man is imprisoned, before trial, *solely* for the purpose of securing his appearance at his trial; and that no punishment nor privation, not clearly and candidly necessary for that purpose, should be inflicted upon him. I keep you in prison, because criminal justice would be defeated by your flight, if I did not ; but criminal justice can go on very well without degrading you to hard and infamous labour, or denying you any reasonable gratification. For these reasons, the first of those acts is just, the rest are mere tyranny.

Mr. Nicoll, in his opinion, tells us, that he has no doubt Parliament would amend the bill, if the omission was stated to them. We, on the contrary, have no manner of doubt that Parliament would treat such a petition with the contempt it deserved. Mr. Peel is much too enlightened and sensible to give any countenance to such a great and glaring error. In this case, — and we wish it were a more frequent one — the wisdom comes from within, and the error from without the walls of Parliament.

A prisoner before trial who can support himself, ought to be allowed every fair and rational enjoyment which he can purchase, not incompatible with prison

discipline. He should be allowed to buy ale or wine in moderation, — to use tobacco, or any thing else he can pay for within the above-mentioned limits. If he cannot support himself, and declines work, then he should be supported upon a very plain, but still a plentiful diet (something better, we think, than bread and water); and all prisoners before trial should be *allowed* to work. By a liberal share of earnings (or rather by rewards, for there would be no earnings), and also by an improved diet, and in the hands of humane magistrates*, there would soon appear to be no necessity for appealing to the tread-mill till trial was over.

This tread-mill, after trial, is certainly a very excellent method of punishment, as far as we are yet acquainted with its effects. We think, at present, however, it is a little abused; and hereafter it is our intention to express our opinion upon the limits to which it ought to be confined. Upon this point, however, we do not much differ from Mr. Headlam; although, in his remarks on the treatment of prisoners before trial, we think he has made a very serious mistake, and has attempted (without knowing what he was doing, and meaning, we are persuaded, nothing but what was honest and just) to pluck up one of the ancient landmarks of human justice.†

* All magistrates should remember, that nothing is more easy to a person entrusted with power than to convince himself it is his duty to treat his fellow-creatures with severity and rigour, — and then to persuade himself that he is doing it very reluctantly, and contrary to his real feeling.

† We hope this article will conciliate our old friend Mr. Roscoe; who is very angry with us for some of our former lucubrations on prison discipline, — and, above all, because we are not grave enough for him. The difference is thus stated: — Six ducks are

stolen. Mr. Roscoe would commit the man to prison for six weeks, perhaps, — reason with him, argue with him, give him tracts, send clergymen to him, work him gently at some useful trade, and try to turn him from the habit of stealing poultry. *We* would keep him hard at work twelve hours every day at the tread-mill, feed him only so as not to impair his health, and then give him as much of Mr. Roscoe's system as was compatible with our own; and we think our method would diminish the number of duck-stealers more effectually than that of the historian of Leo X. The primary duck-stealer would, we think, be as effectually deterred from repeating the offence by the terror of our imprisonment, as by the excellence of Mr. Roscoe's education — and, what is of infinitely greater consequence, innumerable duck-stealers would be prevented. Because punishment does not annihilate crime, it is folly to say it does not lessen it. It did not stop the murder of Mrs. Donatty; but how many Mrs. Donattys has it kept alive! When we recommend severity, we recommend, of course, that degree of severity which will not excite compassion for the sufferer, and lessen the horror of the crime. This is why we do not recommend torture and amputation of limbs. When a man has been proved to have committed a crime, it is expedient that society should make use of that man for the diminution of crime: he belongs to them for that purpose. Our primary duty, in such a case, is so to treat the culprit that many other persons may be rendered better, or prevented from being worse by dread of the same treatment; and, making this the principal object, to combine with it as much as possible the improvement of the individual. The ruffian who killed Mr. Mumford was hung within forty-eight hours. Upon Mr. Roscoe's principles, this was wrong; for it certainly was not the way to reclaim the man: — We say, on the contrary, the object was to do any thing with the man which would render murders less frequent, and that the conversion of the man was a mere trifle compared to this. His death probably prevented the necessity of reclaiming a dozen murderers. That death will not, indeed, prevent all murders in that county; but many who have seen it, and many who have heard of it, will swallow their revenge from the dread of being hanged. Mr. Roscoe is very severe upon our style; but poor dear Mr. Roscoe should remember that men have different tastes, and different methods of going to work. We feel these matters as deeply as he does. But why so cross upon this or any other subject?

AMERICA. (E. REVIEW, 1824.)

1. *Travels through Part of the United States and Canada, in 1818 and 1819.* By John M. Duncan, A.B. Glasgow, 1823.
2. *Letters from North America, written during a Tour in the United States and Canada.* By Adam Hodgson. London, 1824.
3. *An Excursion through the United States and Canada, during the Years 1822-3.* By an English Gentleman. London, 1824.

THERE are a set of miserable persons in England, who are dreadfully afraid of America and every thing American — whose great delight is to see that country ridiculed and vilified — and who appear to imagine that all the abuses which exist in this country acquire additional vigour and chance of duration from every book of Travels which pours forth its venom and falsehood on the United States. We shall from time to time call the attention of the public to this subject, not from any party spirit, but because we love truth, and praise excellence wherever we find it; and because we think the example of America will in many instances tend to open the eyes of Englishmen to their true interests.

The *Economy* of America is a great and important object for our imitation. The salary of Mr. Bagot, our late Ambassador, was, we believe, rather higher than that of the President of the United States. The Vice-President receives rather less than the second Clerk of the House of Commons; and all salaries, civil and military, are upon the same scale; and yet

no country is better served than America ! Mr. Hume has at last persuaded the English people to look a little into their accounts, and to see how sadly they are plundered. But we ought to suspend our contempt for America, and consider whether we have not a very momentous lesson to learn from this wise and cautious people on the subject of economy.

A lesson upon the importance of Religious Toleration, we are determined, it would seem, *not* to learn, — either from America or from any other quarter of the globe. The High Sheriff of New York, last year, was a Jew. It was with the utmost difficulty that a bill was carried this year to allow the first Duke of England to carry a gold stick before the King — because he was a Catholic ! — and yet we think ourselves entitled to indulge in impertinent sneers at America, — as if civilisation did not depend more upon making wise laws for the promotion of human happiness, than in having good inns, and post-horses, and civil waiters. The circumstances of the Dissenters' marriage bill are such as would excite the contempt of a Chictaw or Cherokee, if he could be brought to understand them. A certain class of Dissenters beg they may not be compelled to say that they marry in the name of the Trinity, because they do not believe in the Trinity. Never mind, say the corruptionists, you must go on saying you marry in the name of the Trinity, whether you believe in it or not. We know that such a protestation from you will be false ; but, unless you make it, your wives shall be concubines, and your children illegitimate. Is it possible to conceive a greater or more useless tyranny than this ?

‘ In the religious freedom which America enjoys, I see a more unquestioned superiority. In Britain we enjoy tolera-

tion, but here they enjoy liberty. If government has a right to grant toleration to any particular set of religious opinions, it has also a right to take it away ; and such a right with regard to opinions exclusively religious I would deny in all cases, because totally inconsistent with the nature of religion, in the proper meaning of the word, and equally irreconcilable with civil liberty, rightly so called. God has given to each of us his inspired word, and a rational mind to which that word is addressed. He has also made known to us, that each for himself must answer at his tribunal for his principles and conduct. What man, then, or body of men, has a right to tell me, " You do not think aright on religious subjects, but we will tolerate your error ? " The answer is a most obvious one, " Who gave you authority to dictate ? — or what exclusive claim have you to infallibility ? " If my sentiments do not lead me into conduct inconsistent with the welfare of my fellow-creatures, the question as to their accuracy or fallacy is one between God and my own conscience ; and, though a fair subject for argument, is none for compulsion.

‘ The Inquisition undertook to regulate astronomical science, and kings and parliaments have with equal propriety presumed to legislate upon questions of theology. The world has outgrown the former, and it will one day be ashamed that it has been so long of outgrowing the latter. The founders of the American republic saw the absurdity of employing the attorney-general to refute deism and infidelity, or of attempting to influence opinion on abstract subjects by penal enactment ; they saw also the injustice of taxing the whole to support the religious opinions of the few, and have set an example which older governments will one day or other be compelled to follow.

‘ In America the question is not, What is his creed ? — but, What is his conduct ? Jews have all the privileges of Christians ; Episcopalians, Presbyterians, and Independents, meet on common ground. No religious test is required to qualify for public office, except in some cases a mere verbal assent to the truth of the Christian religion ; and in every court throughout the country, it is optional whether you give

your affirmation or your oath.'—*Duncan's Travels*, II. 328—330.

In fact, it is hardly possible for any nation to show a greater superiority over another than the Americans, in this particular, have done over this country. They have fairly and completely, and probably for ever, extinguished that spirit of religious persecution which has been the employment and the curse of mankind for four or five centuries,—not only that persecution which imprisons and scourges for religious opinions, but the tyranny of incapacitation, which, by disqualifying from civil offices, and cutting a man off from the lawful objects of ambition, endeavours to strangle religious freedom in silence, and to enjoy all the advantages, without the blood, and noise, and fire of persecution. What passes in the mind of one mean blockhead is the general history of all persecution. 'This man pretends to know better than me—I cannot subdue him by argument; but I will take care he shall never be mayor or alderman of the town in which he lives; I will never consent to the repeal of the Test Act or to Catholic emancipation; I will teach the fellow to differ from me in religious opinions!' So says the Episcopalian to the Catholic—and so the Catholic says to the Protestant. But the wisdom of America keeps them all down—secures to them all their just rights—gives to each of them their separate pews, and bells, and steeples—makes them all aldermen in their turns—and quietly extinguishes the faggots which each is preparing for the combustion of the other. Nor is this indifference to religious subjects in the American people, but pure civilisation—a thorough comprehension of what is best calculated to secure the public happiness and peace—and a determination that this happiness and

peace shall not be violated by the insolence of any human being, in the garb, and under the sanction, of religion. In this particular, the Americans are at the head of all the nations of the world: and at the same time they are, especially in the Eastern and Midland States, so far from being indifferent on subjects of religion, that they may be most justly characterised as a very religious people: but they are devout without being unjust (the great problem in religion); an higher proof of civilisation than painted tea-cups, waterproof leather, or broad cloth at two guineas a yard.

America is exempted, by its very newness as a nation, from many of the evils of the old governments of Europe. It has no mischievous remains of feudal institutions, and no violations of political economy sanctioned by time, and older than the age of reason. If a man finds a partridge upon his ground eating his corn, in any part of Kentucky or Indiana, he may kill it, even if his father is not a Doctor of Divinity. The Americans do not exclude their own citizens from any branch of commerce which they leave open to all the rest of the world.

‘ One of them said, that he was well acquainted with a British subject, residing at Newark, Upper Canada, who annually smuggled from 500 to 1000 chests of tea into that province from the United States. He mentioned the name of this man, who he said was growing very rich in consequence; and he stated the manner in which the fraud was managed. Now, as all the tea ought to be brought from England, it is of course very expensive; and therefore the Canadian tea dealers, after buying one or two chests at Montreal or elsewhere, which have the Customhouse mark upon them, fill them up ever afterwards with tea brought from the United States. It is calculated that near 10,000 chests are annually consumed in the Canadas, of which not more than 2000 or

3000 come from Europe. Indeed, when I had myself entered Canada, I was told that of every fifteen pounds of tea sold there, thirteen were smuggled. The profit upon smuggling this article is from 50 to 100 per cent., and with an extensive and wild frontier like Canada, cannot be prevented. Indeed it every year increases, and is brought to a more perfect system. But I suppose that the English government, which is the perfection of wisdom, will never allow the Canadian merchants to trade direct to China, in order that (from pure charity) the whole profit of the tea trade may be given up to the United States.'—*Excursion*, p. 394, 395.

'You will readily conceive, that it is with no small mortification that I hear these American merchants talk of sending their ships to London and Liverpool, to take in goods or specie, with which to purchase tea for the supply of European ports, almost within sight of our own shores. They often taunt me, by asking me what our government can possibly mean by prohibiting us from engaging in a profitable trade, which is open to them and to all the world; or where can be our boasted liberties, while we tamely submit to the infraction of our natural rights, to supply a monopoly as absurd as it is unjust, and to humour the caprice of a company who exclude their fellow-subjects from a branch of commerce which they do not pursue themselves, but leave to the enterprise of foreigners, or commercial rivals. On such occasions I can only reply, that both our government and people are growing wiser; and that if the charter of the East India Company be renewed, when it next expires, I will allow them to infer, that the people of England have little influence in the administration of their own affairs.'—*Hodgson's Letters*, II. 128, 129.

Though America is a confederation of republics, they are in many cases much more amalgamated than the various parts of Great Britain. If a citizen of the United States can make a shoe, he is at liberty to make a shoe any where between Lake Ontario and New Orleans,—he may sole on the Mississippi—heel on the Missouri—measure Mr. Birkbeck on the little Wabash, to take (which our

best politicians do not find an easy matter), the length of Mr. Munro's foot on the banks of the Potowmac. But woe to the cobbler, who, having made Hessian boots for the aldermen of Newcastle, should venture to invest with these coriaceous integuments the leg of a liege subject at York. A yellow ant in a nest of red ants—a butcher's dog in a fox-kennel—a mouse in a bee-hive,—all feel the effects of untimely intrusion;—but far preferable their fate to that of the misguided artisan, who, misled by sixpenny histories of England, and conceiving his country to have been united at the Heptarchy, goes forth from his native town to stitch freely within the sea-girt limits of Albion. Him the mayor, him the aldermen, him the recorder, him the quarter-sessions would worry. Him the justices before trial would long to get into the tread-mill* ; and would much lament that, by a

* This puts us in mind of our friend Mr. Headlam, who, we hear, has written an answer to our Observations on the Tread-mill, before Trial. It would have been a very easy thing for us to have hung Mr. Headlam up as a spectacle to the United Kingdoms of England, Scotland, and Ireland, the principality of Wales, and the town of Berwick-on-Tweed ; but we have no wish to make a worthy and respectable man ridiculous. For these reasons we have not even looked at his pamphlet, and we decline entering into a controversy upon a point, where, among men of sense and humanity (who have not heated themselves in the dispute), there cannot possibly be any difference of opinion. All members of both Houses of Parliament were unanimous in their condemnation of the odious and nonsensical practice of working prisoners in the tread-mill before trial. It had not one single advocate. Mr. Headlam and the Magistrates of the North Riding, in their eagerness to save a relic of their prison system, forgot themselves so far as to petition to be intrusted with the power of putting prisoners to work before trial, *with their own consent*—the answer of the Legislature was, “ We will not trust you,”—the severest practical rebuke ever received by any public body. We will leave it to others to determine

recent act, they could not do so, even with the intruding tradesman's consent ; but the moment he was tried, they would push him in with redoubled energy, and leave him to tread himself into a conviction of the barbarous institutions of his corporation-divided country.

Too much praise cannot be given to the Americans for their great attention to the subject of Education. All the public lands are surveyed according to the direction of Congress. They are divided into townships of six miles square, by lines running with the cardinal points, and consequently crossing each other at right angles. Every township is divided into 36 sections, each a mile square, and containing 640 acres. One section in each township is reserved, and given in perpetuity for the benefit of common schools. In addition to this, the States of Tennessee and Ohio have received grants for the support of colleges and academies. The appropriation generally in the new States for seminaries of the higher orders, amount to one fifth of those for common schools. It appears from Seybert's Statistical Annals, that the land in the states and territories on the east side of the Mississippi, in which appropriations have been made, amounts to 237,300 acres ; and according to the ratio above mentioned, the aggregate on the east side of the Mississippi is 7,900,000. The same system of appropriation applied to the west, will make, for schools and colleges, 6,600,000 ; and the total appro-

whether it was deserved. We have no doubt the great body of Magistrates meant well. They *must* have meant well—but they have been sadly misled, and have thrown odium on the subordinate administration of justice, which it is far from deserving on other occasions, in their hands. This strange piece of nonsense is, however, now well ended.—*Requiescat in pace !*

priation for literary purposes, in the new States and territories, 14,500,000 acres, which, at two dollars per acre, would be 29,000,000 dollars. These facts are very properly quoted by Mr. Hodgson ; and it is impossible to speak too highly of their value and importance. They quite put into the back ground every thing which has been done in the Old World for the improvement of the lower orders, and confer deservedly upon the Americans the character of a wise, a reflecting, and a virtuous people.

It is rather surprising that such a people, spreading rapidly over so vast a portion of the earth, and cultivating all the liberal and useful arts so successfully, should be so extremely sensitive and touchy as the Americans are said to be. We really thought at one time they would have fitted out an armament against the Edinburgh and Quarterly Reviews, and burnt down Mr. Murray's and Mr. Constable's shops, as we did the American Capitol. We, however, remember no other anti-American crime of which we were guilty, than a preference of Shakspeare and Milton over Joel Barlow and Timothy Dwight. That opinion we must still take the liberty of retaining. There is nothing in Dwight comparable to the finest passages of Paradise Lost, nor is Mr. Barlow ever humorous or pathetic, as the great Bard of the English stage is humorous and pathetic. We have always been strenuous * advocates for, and admirers of, America

* Ancient women, whether in or out of breeches, will of course imagine that we are the enemies of the institutions of our country, because we are the admirers of the institutions of America: but circumstances differ. American institutions are too new, English institutions are ready made to our hands. If we were to build the house afresh, we might perhaps avail ourselves of the improvements of a new plan; but we have no sort of wish to pull down

—not taking our ideas from the overweening vanity of the weaker part of the Americans themselves, but from what we have observed of their real energy and wisdom. It is very natural that we Scotch, who live in a little shabby scraggy corner of a remote island, with a climate which cannot ripen an apple, should be jealous of the aggressive pleasantry of more favoured people ; but that Americans, who have done so much for themselves, and received so much from nature, should be flung into such convulsions by English Reviews and Magazines, is really a sad specimen of Columbian juvenility. We hardly dare to quote the following account of an American route, for fear of having our motives misrepresented,—and strongly suspect that there are but few Americans who could be brought to admit that a Philadelphia or Boston concern of this nature is not quite equal to the most brilliant assemblies of London or Paris.

‘ A tea party is a serious thing in this country ; and some of those at which I have been present in New York and elsewhere, have been on a very large scale. In the modern houses the two principal apartments are on the first floor, and communicate by large folding doors, which on gala days throw wide their ample portals, converting the two apartments into one. At the largest party which I have seen, there were about thirty young ladies present, and more than as many gentlemen. Every sofa, chair, and footstool, were occupied by the ladies, and little enough room some of them appeared to have after all. The gentlemen were obliged to be content with walking up and down, talking now with one lady, now with another. Tea was brought in by a couple of blacks,

an excellent house, strong, warm, and comfortable, because, upon second trial, we might be able to alter and amend it,—a principle which would perpetuate demolition and construction. Our plan, where circumstances are tolerable, is to sit down and enjoy ourselves.

carrying large trays, one covered with cups, the other with cake. Slowly making the round, and retiring at intervals for additional supplies, the ladies were gradually gone over; and after much patience the gentlemen began to enjoy the beverage "which cheers but not inebriates;" still walking about, or leaning against the wall, with the cup and saucer in their hand.

' As soon as the first course was over, the hospitable trays again entered, bearing a chaos of preserves—peaches, pine apples, ginger, oranges, citrons, pears, &c. in tempting display. A few of the young gentlemen now accompanied the revolution of the trays, and sedulously attended to the pleasure of the ladies. The party was so numerous that the period between the commencement and the termination of the round, was sufficient to justify a new solicitation; and so the ceremony continued, with very little intermission, during the whole evening. Wine succeeded the preserves, and dried fruit followed the wine; which, in its turn, was supported by sandwiches in name of supper, and a forlorn hope of confectionary and frost work. I pitied the poor blacks who, like Tantalus, had such a profusion of dainties the whole evening at their finger ends, without the possibility of partaking of them. A little music and dancing gave variety to the scene; which to some of us was a source of considerable satisfaction; for when a number of ladies were on the floor, those who cared not for the dance had the pleasure of getting a seat. About eleven o'clock I did myself the honour of escorting a lady home, and was well pleased to have an excuse for escaping.'—*Duncan's Travels*, II. 279, 280.

The coaches must be given up; so must the roads, and so must the inns. They are of course what these accommodations are in all new countries; and much like what English great-grandfathers talk about as existing in this country at the first period of their recollection. The great inconvenience of American inns, however, in the eyes of an Englishman, is one which more sociable travellers must feel less acutely

—we mean the impossibility of being alone, of having a room separate from the rest of the company. There is nothing which an Englishman enjoys more than the pleasure of sulkiness,—of not being forced to hear a word from any body which may occasion to him the necessity of replying. It is not so much that Mr. Bull disdains to talk, as that Mr. Bull has nothing to say. His forefathers have been out of spirits for six or seven hundred years, and, seeing nothing but fog and vapour, he is out of spirits too ; and when there is no selling or buying, or no business to settle, he prefers being alone and looking at the fire. If any gentleman was in distress, he would willingly lend an helping hand ; but he thinks it no part of neighbourhood to talk to a person because he happens to be near him. In short, with many excellent qualities, it must be acknowledged that the English are the most disagreeable of all the nations of Europe,—more surly and morose, with less disposition to please, to exert themselves for the good of society, to make small sacrifices, and to put themselves out of their way. They are content with Magna Charta and Trial by Jury ; and think they are not bound to excel the rest of the world in small behaviour, if they are superior to them in great institutions.

We are terribly afraid that some Americans spit upon the floor, even when that floor is covered by good carpets. Now, all claims to civilisation are suspended till this secretion is otherwise disposed of. No English gentleman has spit upon the floor since the Heptarchy.

The curiosity for which the Americans are so much laughed at, is not only venial, but laudable. Where men live in woods and forests, as is the case, of

course, in remote American settlements, it is the duty of every man to gratify the inhabitants by telling them his name, place, age, office, virtues, crimes, children, fortune, and remarks : and with fellow-travellers, it seems to be almost a matter of necessity to do so. When men ride together for 300 or 400 miles through woods and prairies, it is of the greatest importance that they should be able to guess at subjects most agreeable to each other, and to multiply their common topics. Without knowing who your companion is, it is difficult to know both what to say and what to avoid. You may talk of honour and virtue to an attorney, or contend with a Virginia planter that men of a fair colour have no right to buy and sell men of a dusky colour. The following is a lively description of the rights of interrogation, as understood and practised in America.

‘As for the *inquisitiveness* of the Americans, I do not think it has been at all exaggerated.—They certainly are, as they profess to be, a very inquiring people ; and if we may sometimes be disposed to dispute the claims of their *love of knowing* to the character of a liberal curiosity, we must at least admit that they make a most liberal use of every means in their power to gratify it. I have seldom, however, had any difficulty in repressing their home questions, if I wished it, and without offending them ; but I more frequently amused myself by putting them on the rack, civilly, and apparently unconsciously, eluded their inquiries for a time, and then awakening their gratitude by such a discovery of myself as I might choose to make. Sometimes a man would place himself at my side in the wilderness, and ride for a mile or two without the smallest communication between us, except a slight nod of the head. He would then, perhaps, make some grave remark on the weather, and if I assented, in a monosyllable, he would stick to my side for another mile or two, when he would commence his attack. “I reckon,

stranger, you do not belong to these parts?" — No, sir; I am not a native of Alabama." — "I guess you are from the north?" — "No, sir; I am not from the north." — "I guess you found the roads mighty muddy, and the creeks swimming. You are come a long way, I guess?" — "No, not so very far; we have travelled a few hundred miles since we turned our faces westward." — "I guess you have seen Mr. —, or General —?" (mentioning the names of some well-known individuals in the Middle and Southern States, who were to serve as guide-posts to detect our route;) but, "I have not the pleasure of knowing any of them," or, "I have the pleasure of knowing all," equally defeated his purpose, but not his hopes. "I reckon, stranger, you have had a good crop of cotton this year?" — "I am told, sir, the crops have been unusually abundant in Carolina and Georgia." — "You grow tobacco, then, I guess?" (to track me to Virginia.) "No; I do not grow tobacco." Here a modest inquirer would give up in despair, and trust to the chapter of accidents to develop my name and history; but I generally rewarded his modesty, and excited his gratitude, by telling him I would torment him no longer.

' The courage of a thorough-bred Yankee* would rise with his difficulties; and after a decent interval, he would resume: "I hope no offence, sir; but you know we Yankees lose nothing for want of asking. I guess, stranger, you are from the old country?" — "Well, my friend, you have guessed right at last, and I am sure you deserve something for your perseverance; and now I suppose it will save us both trouble if I proceed to the second part of the story, and tell you where I am going. I am going to New Orleans." This is really no exaggerated picture: dialogues, not indeed in these very words, but *to this effect*, occurred continually, and some of them more minute and extended than I can venture upon in a letter. I ought, however, to say, that many questions lose much of their familiarity when travelling in the wilder-

* In America, the term Yankee is applied to the natives of New England only, and is generally used with an air of pleasantry.

ness. "Where are you from?" and "whither are you bound?" do not appear impertinent interrogations at sea; and often in the western wilds I found myself making inquiries which I should have thought very free and easy at home.'—*Hodgson's Letters*, II. 32-35.

In all new and distant settlements the forms of law must, of course, be very limited. No justice's warrant is current in the dismal swamp; constables are exceedingly puzzled in the neighbourhood of the Mississippi; and there is no tread-mill, either before or after trial, on the Little Wabash. The consequence of this is, that the settlers take the law into their own hands, and give notice to a justice-proof delinquent to quit the territory — if this notice is disobeyed, they assemble and whip the culprit, and this failing, on the second visit, they cut off his ears. In short, Captain Rock has his descendants in America. Mankind cannot live together without some approximation to justice; and if the actual government will not govern well, or cannot govern well, is too wicked or too weak to do so — then men prefer Rock to anarchy. The following is the best account we have seen of this system of irregular justice.

'After leaving Carlyle, I took the Shawnee town road, that branches off to the S. E., and passed the Walnutt Hills, and Moore's Prairie. These two places had a year or two before been infested by a notorious gang of robbers and forgers, who had fixed themselves in these wild parts in order to avoid justice. As the country became more settled, these desperadoes became more and more troublesome. The inhabitants therefore took that method of getting rid of them that had been adopted not many years ago in Hopkinson and Henderson counties, Kentucky, and which is absolutely necessary in new and thinly settled districts, where it is almost impossible to punish a criminal according to legal forms.

'On such occasions, therefore, all the quiet and industrious

men of a district form themselves into companies, under the name of "Regulators." They appoint officers, put themselves under their orders, and bind themselves to assist and stand by each other. The first step they then take is to send notice to any notorious vagabonds, desiring them to quit the State in a certain number of days, under the penalty of receiving a domiciliary visit. Should the person who receives the notice refuse to comply, they suddenly assemble, and when unexpected, go in the night time to the rogue's house, take him out, tie him to a tree, and give him a severe whipping, every one of the party striking him a certain number of times.

' This discipline is generally sufficient to drive off the culprit; but should he continue obstinate, and refuse to avail himself of another warning, the Regulators pay him a second visit, inflict a still severer whipping, with the addition probably of cutting off both his ears. No culprit has ever been known to remain after a second visit. For instance, an old man, the father of a family, all of whom he educated as robbers, fixed himself at Moore's Prairie, and committed numerous thefts, &c. &c. He was hardy enough to remain after the first visit, when both he and his sons received a whipping. At the second visit the Regulators punished him very severely, and cut off his ears. This drove him off, together with his whole gang; and travellers can now pass in perfect safety where it was once dangerous to travel alone.'

' There is also a company of Regulators near Vincennes, who have broken up a notorious gang of coiners and thieves who had fixed themselves near that place. These rascals, before they were driven off, had parties settled at different distances in the woods, and thus held communication and passed horses and stolen goods from one to another, from the Ohio to Lake Erie, and from thence into Canada or the New England States. Thus it was next to impossible to detect the robbers, or to recover the stolen property.

' This practice of *Regulating* seems very strange to an European. I have talked with some of the chief men of the Regulators, who all lamented the necessity of such a system. They very sensibly remarked, that when the country became

more thickly settled, there would no longer be any necessity for such proceedings, and that they should all be delighted at being able to obtain justice in a more formal manner. I forgot to mention, that the rascals punished have sometimes prosecuted the Regulators for an assault. The juries, however, knowing the bad character of the prosecutors, would give but trifling damages, which, divided among so many, amounted to next to nothing for each individual.'—*Excursion*, p. 233–236.

This same traveller mentions his having met at table three or four American ex-kings — presidents who had served their time, and had retired into private life ; he observes also upon the effect of a democratical government in preventing mobs. Mobs are created by opposition to the wishes of the people ; — but when the wishes of the people are consulted so completely as they are consulted in America — all motives for the agency of mobs are done away.

' It is, indeed, entirely a government of opinion. Whatever the people wish is done. If they want any alteration of laws, tariffs, &c. they inform their representatives, and if there be a majority that wish it, the alteration is made at once. In most European countries there is a portion of the population denominated the *mob*, who, not being acquainted with real liberty, give themselves up to occasional fits of licentiousness. But in the United States there is no *mob*, for every man feels himself free. At the time of Burr's conspiracy, Mr. Jefferson said, that there was little to be apprehended from it, as every man felt himself a part of the general sovereignty. The event proved the truth of this assertion ; and Burr, who in any other country would have been hanged, drawn, and quartered, is at present leading an obscure life in the city of New York, despised by every one.'—*Excursion*, p. 70.

It is a real blessing for America to be exempted from that vast burthen of taxes, the consequences of a long series of foolish just and necessary wars,

carried on to please kings and queens, or the waiting maids, and waiting lords or gentlemen, who have always governed kings and queens in the Old World. The Americans owe this good to the newness of their government; and though there are few classical associations, or historical recollections in the United States, this barrenness is well purchased by the absence of all the feudal nonsense, inveterate abuses, and profligate debts of an old country.

‘The good effects of a free government are visible throughout the whole country. There are no tithes, no poor-rates, no excise, no heavy internal taxes, no commercial monopolies. An American can make candles if he have tallow, can distil brandy if he have grapes or peaches, and can make beer if he have malt and hops, without asking leave of any one, and much less with any fear of incurring punishment. How would a farmer’s wife there be astonished, if told that it was contrary to law for her to make soap out of the potass obtained on the farm, and of the grease she herself had saved! When an American has made these articles, he may build his little vessel, and take them without hinderance to any part of the world; for there is no rich company of merchants that can say to him, “You shall not trade to India; and you shall not buy a pound of tea of the Chinese; as, by so doing, you would infringe upon our privileges.” In consequence of this freedom, all the seas are covered with their vessels, and the people at home are active and independent. I never saw a beggar in any part of the United States; nor was I ever asked for charity but once—and that was by an Irishman.’—*Excursion*, p. 70, 71.

America is so differently situated from the old governments of Europe, that the United States afford no political precedents that are exactly applicable to our old governments. There is no idle and discontented population. When they have peopled themselves up to the Mississippi, they cross to the Mis-

souri, and will go on till they are stopped by the Western Ocean ; and then, when there are a number of persons who have nothing to do, and nothing to gain, no hope for lawful industry and great interest in promoting changes, we may consider their situation as somewhat similar to our own, and their example as touching us more nearly. The changes in the constitution of the particular States seem to be very frequent, very radical, and to us very alarming ; — they seem, however, to be thought very little of in that country, and to be very little heard of in Europe. Mr. Duncan, in the following passage, speaks of them with European feelings.

‘ The other great obstacle to the prosperity of the American nation, universal suffrage *, will not exhibit the full extent of its evil tendency for a long time to come ; and it is possible that ere that time some antidote may be discovered, to prevent or alleviate the mischief which we might naturally expect from it. It does, however, seem ominous of evil, that so little ceremony is at present used with the constitutions of the various States. The people of Connecticut, not contented with having prospered abundantly under their old system, have lately assembled a convention, composed of delegates from all parts of the country, in which the former order of things has been condemned entirely, and a completely new constitution manufactured ; which, among other things, provides for the same process being again gone through, as soon as the *profanum vulgus* takes it into its head to desire it.† A sorry legacy the British Constitution would be to us, if it were at the mercy of a meeting of delegates, to be summoned

* In the greater number of the States, every white person, 21 years of age, who has paid taxes for one year, is a voter ; in others, some additional qualifications are required, but they are not such as materially to limit the privilege.

† The people of the State of New York have subsequently taken a similar fancy to *clout the cauldron*. (1822.)

whenever a majority of the people took a fancy for a new one ; and I am afraid, that if the Americans continue to cherish a fondness for such repairs, the Highlandman's pistol, with its new stock, lock, and barrel, will bear a close resemblance to what is ultimately produced.'—*Duncan's Travels*, II. 335, 336.

In the Excursion there is a list of the American navy, which, in conjunction with the navy of France, will one day or another, we fear, settle the Catholic question in a way not quite agreeable to the Earl of Liverpool for the time being, nor very creditable to the wisdom of those ancestors of whom we hear, and from whom we suffer so much. The regulations of the American navy seem to be admirable. The States are making great exertions to increase this navy ; and since the capture of so many English ships, it has become the favourite science of the people at large. Their flotillas on the lakes completely defeated ours during the last war.

Fanaticism of every description seems to rage and flourish in America, which has no Establishment, in about the same degree which it does here under the nose of an established Church ; — they have their prophets and prophetesses, their preaching encampments, female preachers, and every variety of noise, folly, and nonsense, like ourselves. Among the most singular of these fanatics, are the Harmonites. Rapp, their founder, was a dissenter from the Lutheran Church, and therefore, of course, the Lutheran clergy of Stutgard (near to which he lived) began to put Mr. Rapp in white sheets, to prove him guilty of theft, parricide, treason, and all the usual crimes of which men dissenting from established churches are so often guilty, — and delicate hints were given respecting faggots ! Stutgard abounds with underwood

and clergy ; and — away went Mr. Rapp to the United States, and, with a great multitude of followers, settled about twenty-four miles from our countryman Mr. Birkbeck. His people have here built a large town, and planted a vineyard, where they make very agreeable wine. They carry on also a very extensive system of husbandry, and are the masters of many flocks and herds. They have a distillery, brewery, tannery, make hats, shoes, cotton and woollen cloth, and every thing necessary to the comfort of life. Every one belongs to some particular trade. But in bad weather, when there is danger of losing their crops, Rapp blows a horn, and calls them all together. Over every trade there is a head man, who receives the money and gives a receipt, signed by Rapp, to whom all the money collected is transmitted. When any of these workmen wants a hat or a coat, Rapp signs him an order for the garment, for which he goes to the store, and is fitted. They have one large store where these manufactures are deposited. This store is much resorted to by the neighbourhood, on account of the goodness and cheapness of the articles. They have built an excellent house for their founder, Rapp, — as it might have been predicted they would have done. The Harmonites profess equality, community of goods, and celibacy ; for the men and women (let Mr. Malthus hear this) live separately, and are not allowed the slightest intercourse. In order to keep up their numbers, they have once or twice sent over for a supply of Germans, as they admit no Americans, of any intercourse with whom they are very jealous. The Harmonites dress and live plainly. It is a part of their creed that they should do so. Rapp, however, and the head men have no such par-

ticular creed for themselves ; and indulge in wine, beer, grocery, and other irreligious diet. Rapp is both governor and priest, —preaches to them in church, and directs all their proceedings in their working hours. In short, Rapp seems to have made use of the religious propensities of mankind, to persuade one or two thousand fools to dedicate their lives to his service ; and if they do not get tired, and fling their prophet into a horse-pond, they will in all probability disperse as soon as he dies.

Unitarians are increasing very fast in the United States, not being kept down by charges from bishops and archdeacons, their natural enemies.

The author of the *Excursion* remarks upon the total absence of all games in America. No cricket, foot-ball, nor leap-frog — all seems solid and profitable.

‘ One thing that I could not help remarking with regard to the Americans in general, is the total want of all those games and sports that obtained for our country the appellation of “Merry England.” Although children usually transmit stories and sports from one generation to another, and although many of our nursery games and tales are supposed to have been imported into England in the vessels of Hengist and Horsa, yet our brethren in the United States seem entirely to have forgotten the childish amusements of our common ancestors. In America I never saw even the school-boys playing at any game whatsoever. Cricket, foot-ball, quoits, &c. appear to be utterly unknown ; and I believe that if an American were to see grown-up men playing at cricket, he would express as much astonishment as the Italians did when some Englishmen played at this finest of all games in the Cascina at Florence. Indeed, that joyous spirit which, in our country, animates not only childhood, but also maturer age, can rarely or never be seen among the inhabitants of the United States.’ — *Excursion*, p. 502, 503.

These are a few of the leading and prominent circumstances respecting America, mentioned in the various works before us : of which works we can recommend the Letters of Mr. Hudson, and the Excursion into Canada, as sensible, agreeable books, written in a very fair spirit.

America seems, on the whole, to be a country possessing vast advantages, and little inconveniences ; they have a cheap government, and bad roads ; they pay no tithes, and have stage coaches without springs. They have no poor laws and no monopolies — but their inns are inconvenient, and travellers are teased with questions. They have no collections in the fine arts ; but they have no Lord Chancellor, and they can go to law without absolute ruin. They cannot make Latin verses, but they expend immense sums in the education of the poor. In all this the balance is prodigiously in their favour : but then comes the great disgrace and danger of America — the existence of slavery, which, if not timously corrected, will one day entail (and ought to entail) a bloody servile war upon the Americans — which will separate America into slave states and states disclaiming slavery, and which remains at present as the foulest blot in the moral character of that people. An high spirited nation, who cannot endure the slightest act of foreign aggression, and who revolt at the very shadow of domestic tyranny — beat with cart-whips, and bind with chains, and murder for the merest trifles, wretched human beings who are of a more dusky colour than themselves ; and have recently admitted into their Union a new State, with the express permission of ingrafting this atrocious wickedness into their constitution ! No one can admire the simple wisdom and manly firmness of the Americans

more than we do, or more despise the pitiful propensity which exists among Government runners to vent their small spite at their character; but on the subject of slavery, the conduct of America is, and has been, most reprehensible. It is impossible to speak of it with too much indignation and contempt; but for it, we should look forward with unqualified pleasure to such a land of freedom, and such a magnificent spectacle of human happiness.

BENTHAM ON FALLACIES. (E. REVIEW, 1825.)

The Book of Fallacies : from Unfinished Papers of Jeremy Bentham. By a Friend. London, J. and H. L. Hunt. 1824.

THERE are a vast number of absurd and mischievous fallacies, which pass readily in the world for sense and virtue, while in truth they tend only to fortify error and encourage crime. Mr. Bentham has enumerated the most conspicuous of these in the book before us.

Whether it is necessary there should be a middleman between the cultivator and possessor, learned economists have doubted ; but neither gods, men, nor booksellers can doubt the necessity of a middleman between Mr. Bentham and the public. Mr. Bentham is long ; Mr. Bentham is occasionally involved and obscure ; Mr. Bentham invents new and alarming expressions ; Mr. Bentham loves division and subdivision — and he loves method itself, more than its consequences. Those only, therefore, who know his originality, his knowledge, his vigour, and his boldness, will recur to the works themselves. The great mass of readers will not purchase improvement at so dear a rate ; but will choose rather to become acquainted with Mr. Bentham through the medium of Reviews — after that eminent philosopher has been washed, trimmed, shaved, and forced into clean linen. One great use of a Review, indeed, is to make men wise in ten pages who have no appetite for an hundred pages ; to condense nourishment, to work with pulp and essence, and to guard the stomach

from idle burden and unmeaning bulk. For half a page, sometimes for a whole page, Mr. Bentham writes with a power which few can equal; and by selecting and omitting, an admirable style may be formed from the text. Using this liberty, we shall endeavour to give an account of Mr. Bentham's doctrines, for the most part in his own words. Wherever any expression is particularly happy, let it be considered to be Mr. Bentham's: — the dulness we take to ourselves.

Our Wise Ancestors — the Wisdom of our Ancestors — the Wisdom of Ages — venerable Antiquity — Wisdom of Old Times. — This mischievous and absurd fallacy springs from the grossest perversion of the meaning of words. Experience is certainly the mother of wisdom, and the old have, of course, a greater experience than the young; but the question is, who are the old? and who are the young? Of *individuals* living at the same period, the oldest has, of course, the greatest experience; but among *generations* of men the reverse of this is true. Those who come first (our ancestors), are the young people, and have the least experience. We have added to their experience the experience of many centuries; and, therefore, as far as experience goes, are wiser, and more capable of forming an opinion than they were. The real feeling should be, *not*, can we be so presumptuous as to put our opinions in opposition to those of our ancestors? but, can such young, ignorant, inexperienced persons as our ancestors necessarily were, be expected to have understood a subject as well as those who have seen so much more, lived so much longer, and enjoyed the experience of so many more centuries? All this cant, then, about our ancestors is merely an abuse of words, by transferring

phrases true of contemporary men to succeeding ages. Whereas (as we have before observed) of living men the oldest has, *cæteris paribus*, the most experience; of generations, the oldest has, *cæteris paribus*, the least experience. Our ancestors, up to the Conquest, were children in arms; chubby boys in the time of Edward the First; striplings under Elizabeth; men in the reign of Queen Anne; and *we* only are the white-bearded, silver-headed ancients, who have treasured up, and are prepared to profit by, all the experience which human life can supply. We are not disputing with our ancestors the palm of talent, in which they may or may not be our superiors, but the palm of experience, in which it is utterly impossible they can be our superiors. And yet, whenever the Chancellor comes forward to protect some abuse, or to oppose some plan which has the increase of human happiness for its object, his first appeal is always to the wisdom of our ancestors; and he himself, and many noble lords who vote with him, are, to this hour, persuaded that all alterations and amendments on their devices are an unblushing controversy between youthful temerity and mature experience! — and so, in truth, they are — only that much-loved magistrate mistakes the young for the old, and the old for the young — and is guilty of that very sin against experience which he attributes to the lovers of innovation.

We cannot of course be supposed to maintain that our ancestors wanted wisdom, or that they were necessarily mistaken in their institutions, because their means of information were more limited than ours. But we do confidently maintain that when we find it expedient to change any thing which our ancestors have enacted, we are the experienced persons, and

not they. The quantity of talent is always varying in any great nation. To say that we are more or less able than our ancestors, is an assertion that requires to be explained. All the able men of all ages, who have ever lived in England, probably possessed, if taken all together, more intellect than all the able men now in England can boast of. But if authority must be resorted to rather than reason, the question is, What was the wisdom of that single age which enacted the law, compared with the wisdom of the age which proposes to alter it? What are the eminent men of one and the other period? If you say that our ancestors were wiser than us, mention your date and year. If the splendour of names is equal, are the circumstances the same? If the circumstances are the same, we have a superiority of experience, of which the difference between the two periods is the measure. It is necessary to insist upon this; for upon sacks of wool, and on benches forensic, sit grave men, and agricultural persons in the Commons, crying out ‘Ancestors, Ancestors! *hodie non!* Saxons, Danes, save us! Fiddlefrig, help us! Howel, Ethelwolf, protect us.’—Any cover for nonsense—any veil for trash—any pretext for repelling the innovations of conscience and of duty!

‘So long as they keep to vague generalities—so long as the two objects of comparison are each of them taken in the lump—wise ancestors in one lump, ignorant and foolish mob of modern times in the other—the weakness of the fallacy may escape detection. But let them assign for the period of superior wisdom any determinate period whatsoever, not only will the groundlessness of the notion be apparent (class being compared with class in that period and the present one), but, unless the antecedent period be comparatively speaking a very modern one, so wide will be the disparity, and to such an amount in favour of modern times, that, in comparison of the

lowest class of the people in modern times, (always supposing them proficient in the art of reading, and their proficiency employed in the reading of newspapers,) the very highest and best informed class of these wise ancestors will turn out to be grossly ignorant.

‘ Take, for example, any year in the reign of Henry the Eighth, from 1509 to 1546. At that time the House of Lords would probably have been in possession of by far the larger proportion of what little instruction the age afforded: in the House of Lords, among the laity, it might even then be a question whether, without exception, their lordships were all of them able so much as to read. But even supposing them all in the fullest possession of that useful art, political science being the science in question, what instruction on the subject could they meet with at that time of day?

‘ On no one branch of legislation was any book extant from which, with regard to the circumstances of the then present times, any useful instruction could be derived: distributive law, penal law, international law, political economy, so far from existing as sciences, had scarcely obtained a name: in all those departments, under the head of *quid faciendum*, a mere blank: the whole literature of the age consisted of a meagre chronicle or two, containing short memorandums of the usual occurrences of war and peace, battles, sieges, executions, revels, deaths, births, processions, ceremonies, and other external events; but with scarce a speech or an incident that could enter into the composition of any such work as a history of the human mind—with scarce an attempt at investigation into causes, characters, or the state of the people at large. Even when at last, little by little, a scrap or two of political instruction came to be obtainable, the proportion of error and mischievous doctrine mixed up with it was so great, that whether a blank unfilled might not have been less prejudicial than a blank thus filled, may reasonably be matter of doubt.

‘ If we come down to the reign of James the First, we shall find that Solomon of his time eminently eloquent as well as learned, not only among crowned but among uncrowned heads, marking out for prohibition and punishment the practices of devils and witches, and without any the

slightest objection on the part of the great characters of that day in their high situations, consigning men to death and torment for the misfortune of not being so well acquainted as he was with the composition of the Godhead.

‘ Under the name of Exorcism the Catholic liturgy contains a form of procedure for driving out devils: — even with the help of this instrument, the operation cannot be performed with the desired success but by an operator qualified by holy orders for the working of this as well as so many other wonders. In our days and in our country the same object is attained, and beyond comparison more effectually, by so cheap an instrument as a common newspaper: before this talisman, not only devils but ghosts, vampires, witches, and all their kindred tribes, are driven out of the land, never to return again! The Touch of holy water is not so intolerable to them as the bare smell of printers’ ink.’ pp. 74—77.

Fallacy of irrevocable Laws.—A law, says Mr. Bentham (no matter to what effect), is proposed to a legislative assembly, who are called upon to reject it, upon the single ground, that by those who in some former period exercised the same power, a regulation was made, having for its object to preclude for ever, or to the end of an unexpired period, all succeeding legislators from enacting a law to any such effect as that now proposed.

Now it appears quite evident that, at every period of time, every Legislature must be endowed with all those powers which the exigency of the times may require; and any attempt to infringe on this power is inadmissible and absurd. The sovereign power, at any one period, can only form a blind guess at the measures which may be necessary for any future period: but by this principle of immutable laws, the government is transferred from those who are necessarily the best judges of what they want, to others who can know little or nothing about the matter. The thirteenth century decides for the fourteenth.

The fourteenth makes laws for the fifteenth. The fifteenth hermetically seals up the sixteenth, which tyrannises over the seventeenth, which again tells the eighteenth how it is to act, under circumstances which cannot be foreseen, and how it is to conduct itself in exigences which no human wit can anticipate.

‘ Men who have a century more of experience to ground their judgments on, surrender their intellect to men who had a century less experience, and who, unless that deficiency constitutes a claim, have no claim to preference. If the prior generation were, in respect of intellectual qualification, ever so much superior to the subsequent generation — if it understood so much better than the subsequent generation itself the interest of that subsequent generation — could it have been in an equal degree anxious to promote that interest, and consequently equally attentive to those facts with which, though in order to form a judgment it ought to have been, it is impossible that it should have been acquainted? In a word, will its love for that subsequent generation be quite so great as that same generation’s love for itself?

‘ Not even here, after a moment’s deliberate reflection, will the assertion be in the affirmative. And yet it is their prodigious anxiety for the welfare of their posterity that produces the propensity of these sages to tie up the hands of this same posterity for evermore — to act as guardians to its perpetual and incurable weakness, and take its conduct for ever out of its own hands.

‘ If it be right that the conduct of the 19th century should be determined not by its own judgment, but by that of the 18th, it will be equally right that the conduct of the 20th century should be determined, not by its own judgment, but by that of the 19th. And if the same principle were still pursued, what at length would be the consequence? — that in process of time the practice of legislation would be at an end. The conduct and fate of all men would be determined by those who neither knew nor cared any thing about the matter; and the aggregate body of the Living would remain for ever in subjection to an inexorable tyranny, exercised as it were by the aggregate body of the Dead.’ pp. 84—86.

The despotism, as Mr. Bentham well observes, of Nero or Caligula, would be more tolerable than an *irrevocable law*. The despot, through fear or favour, or in a lucid interval, might relent; but how are the Parliament, who made the Scotch Union, for example, to be awakened from that dust in which they repose—the jobber and the patriot, the speaker and the doorkeeper, the silent voters, and the men of rich allusions—Cannings and cultivators, Barings and beggars—making irrevocable laws for men who toss their remains about with spades, and use the relics of these legislators, to give breadth to brocoli, and to aid the vernal eruption of asparagus?

If the law is good, it will support itself; if bad, it should not be supported by the *irrevocable theory*, which is never resorted to but as the veil of abuses. All living men must possess the supreme power over their own happiness at every particular period. To suppose that there is any thing which a whole nation cannot do, which they deem to be essential to their happiness, and that they cannot do it, because *another* generation, long ago dead and gone, said it must not be done, is mere nonsense. While you are captain of the vessel, do what you please; but the moment you quit the ship, I become as omnipotent as you. You may leave me as much *advice* as you please, but you cannot leave me *commands*; though, in fact, this is the only meaning which can be applied to what are called irrevocable laws. It appeared to the legislature for the time being to be of immense importance to make such and such a law. Great good was gained, or great evil avoided by enacting it. Pause before you alter an institution which has been deemed to be of so much importance. This is prudence and common sense; the rest is the exaggeration of fools, or

the artifice of knaves, who eat up fools. What endless nonsense has been talked of our navigation laws! What wealth has been sacrificed to either before they were repealed! How impossible it appeared to Noddledom to repeal them. They were considered of the irrevocable class—a kind of law over which the dead only were omnipotent, and the living had no power. Frost, it is true, cannot be put off by act of Parliament, nor can Spring be accelerated by any majority of both Houses. It is however quite a mistake to suppose that any alteration of any of the Articles of Union is as much out of the jurisdiction of Parliament as these meteorological changes. In every year, and every day of that year, living men have a right to make their own laws, and manage their own affairs: to break through the tyranny of the ante-spirants—the people who breathed before them, and to do what they please for themselves. Such supreme power cannot indeed be well exercised by the people at large; it must be exercised therefore by the delegates, or parliament whom the people choose; and such parliament, disregarding the superstitious reverence for *irrevocable laws*, can have no other criterion of wrong and right than that of public utility.

When a law is considered as immutable, and the immutable law happens at the same time to be too foolish and mischievous to be endured, instead of being repealed, it is clandestinely evaded, or openly violated; and thus the authority of all law is weakened.

Where a nation has been ancestrally bound by foolish and improvident treaties, ample notice must be given of their termination. Where the state has made ill-advised grants, or rash bargains with indi-

viduals, it is necessary to grant proper compensation. The most difficult case, certainly, is that of the union of nations, where a smaller number of the weaker nation is admitted into the larger senate of the greater nation, and will be overpowered if the question comes to a vote ; but the lesser nation must run this risk : it is not probable that any violation of articles will take place, till they are absolutely called for by extreme necessity. But let the danger be what it may, no danger is so great, no supposition so foolish, as to consider any human law as irrevocable. The shifting attitude of human affairs would often render such a condition an intolerable evil to all parties. The absurd jealousy of our countrymen at the Union secured heritable jurisdiction to the owners ; nine-and-thirty years afterwards they were abolished, in the very teeth of the Act of Union, and to the evident promotion of the public good.

Continuity of a Law by Oath.—The Sovereign of England at his Coronation takes an oath to maintain the laws of God, the true profession of the Gospel and the Protestant religion as established by law, and to preserve to the Bishops and Clergy of this realm the rights and privileges which by law appertain to them, and to preserve inviolate the doctrine, discipline, worship, and government of the Church. It has been suggested that by this oath the King stands precluded from granting those indulgences to the Irish Catholics, which are included in the bill for their emancipation. The true meaning of these provisions is of course to be decided, if doubtful, by the same legislative authority which enacted them. But a different notion it seems is now afloat. The King for the time being (we are putting an imaginary case) thinks as an individual, that he is not maintaining the doctrine, discipline, and rights of the Church of Eng-

land, if he grants any extension of civil rights to those who are not members of that Church, that he is violating his oath by so doing. This oath, then, according to this reasoning is the great palladium of the Church. As long as it remains inviolate the Church is safe. How then can any monarch who has taken it ever consent to repeal it? How can he, consistently with his oath for the preservation of the privileges of the Church, contribute his part to throw down so strong a bulwark as he deems this oath to be? The oath, then, cannot be altered. It must remain under all circumstances of society the same. The King, who has taken it, is bound to continue it, and to refuse his sanction to any bill for its future alteration; because it prevents him, and, he must needs think, will prevent others from granting dangerous immunities to the enemies of the Church.

Here then is an irrevocable law — a piece of absurd tyranny exercised by the rulers of Queen Anne's time upon the government of 1825 — a certain art of potting and preserving a kingdom, in one shape, attitude, and flavour — and in this way it is that an institution appears like old Ladies' Sweetmeats and made Wines — Apricot Jam 1822 — Currant Wine 1819 — Court of Chancery 1427 — Penal Laws against Catholics 1676. The difference is, that the Ancient Woman is a better judge of mouldy commodities than the illiberal part of his Majesty's Ministers. The potting lady goes sniffing about and admitting light and air to prevent the progress of decay; while to him of the Woolsack, all seems doubly dear in proportion as it is antiquated, worthless, and unusable. It ought not to be in the power of the Sovereign to tie up his own hands, much less the hands of his successors. If the Sovereign is to oppose his own opinion to that

of the two other branches of the legislature, and himself to decide what he considers to be for the benefit of the Protestant Church, and what not, a king who has spent his whole life in the frivolous occupation of a court, may, by perversion of understanding, conceive measures most salutary to the Church to be most pernicious ; and persevering obstinately in his own error, may frustrate the wisdom of his parliament, and perpetuate the most inconceivable folly ! If Henry VIII. had argued in this manner, we should have had no reformation. If George III. had always argued in this manner, the Catholic Code would never have been relaxed. And thus, a king, however incapable of forming an opinion upon serious subjects, has nothing to do but to pronounce the word *Conscience*, and the whole power of the country is at his feet.

Can there be greater absurdity than to say that a man is acting contrary to his conscience who surrenders his opinion upon any subject to those who must understand the subject better than himself ? I think my ward has a claim to the estate ; but the best lawyers tell me he has none. I think my son capable of undergoing the fatigues of a military life ; but the best physicians say he is much too weak. My Parliament say this measure will do the Church no harm ; but I think it very pernicious to the Church. Am I acting contrary to my conscience because I apply much higher intellectual powers than my own, to the investigation and protection of these high interests ?

‘ According to the form in which it is conceived, any such engagement is in effect either a check or a license : — a license under the appearance of a check, and for that very reason but the more efficiently operative.

‘ Chains to the man in power ? Yes : — but only such as

he figures with on the stage: to the spectators as imposing, to himself as light as possible. Modelled by the wearer to suit his own purposes, they serve to rattle, but not to restrain.

‘Suppose a King of Great Britain and Ireland to have expressed his fixed determination, in the event of any proposed law being tendered to him for his assent, to refuse such assent, and this not on the persuasion that the law would not be “for the utility of the subjects,” but that by his coronation oath he stands precluded from so doing:—the course proper to be taken by parliament, the course pointed out by principle and precedent, would be, a vote of abdication:—a vote declaring the king to have abdicated his royal authority, and that, as in case of death or incurable mental derangement, now is the time for the person next in succession to take his place.

‘In the celebrated case in which a vote to this effect was actually passed, the declaration of abdication was in lawyers’ language a fiction—in plain truth a falsehood—and that falsehood a mockery; not a particle of his power was it the wish of James to abdicate, to part with; but to increase it to a maximum was the manifest object of all his efforts. But in the case here supposed, with respect to a part, and that a principal part of the royal authority, the will and purpose to abdicate is actually declared: and this, being such a part, without which the remainder cannot, “to the utility of the subjects,” be exercised, the remainder must of necessity be, on their part, and for their sake, added.’ pp. 110, 111.

Self-trumpeter's Fallacy.—Mr. Bentham explains the self-trumpeter's fallacy as follows.

‘There are certain men in office who, in discharge of their functions, arrogate to themselves a degree of probity, which is to exclude all imputations and all inquiry. Their assertions are to be deemed equivalent to proof; their virtues are guarantees for the faithful discharge of their duties; and the most implicit confidence is to be reposed in them on all occasions. If you expose any abuse, propose any reform, call

for securities, inquiry, or measures to promote publicity, they set up a cry of surprise, amounting almost to indignation, as if their integrity were questioned, or their honour wounded. With all this, they dexterously mix up intimations, that the most exalted patriotism, honour, and perhaps religion, are the only sources of all their actions.' p. 120.

Of course every man will try what he can effect by these means ; but (as Mr. Bentham observes) if there be any one maxim in politics more certain than another, it is that no possible degree of virtue in the governor can render it expedient for the governed to dispense with good laws and good institutions. Madame de Stael (to her disgrace) said to the Emperor of Russia, 'Sire, your character is a constitution for your country, and your conscience its guarantee.' His reply was, 'Quand cela serait, je ne serais jamais qu'un accident heureux ;' and this we think one of the truest and most brilliant replies ever made by monarch.

Laudatory Personalities. — 'The object of laudatory personalities is to effect the rejection of a measure on account of the alleged good character of those who oppose it ; and the argument advanced is, "The measure is rendered unnecessary by the virtues of those who are in power — their opposition is a sufficient authority for the rejection of the measure. The measure proposed implies a distrust of the members of His Majesty's Government ; but so great is their integrity, so complete their disinterestedness, so uniformly do they prefer the public advantage to their own, that such a measure is altogether unnecessary. Their disapproval is sufficient to warrant an opposition ; precautions can only be requisite where danger is apprehended : here, the high character of the individuals in question is a sufficient guarantee against any ground of alarm." pp. 123, 124.

The panegyric goes on increasing with the dignity

of the lauded person. All are honourable and delightful men. The person who opens the door of the office is a person of approved fidelity; the junior clerk is a model of assiduity; all the clerks are models—seven years' models, eight years' models, nine years' models and upwards. The first clerk is a paragon—and ministers the very perfection of probity and intelligence; and as for the highest magistrate of the state, no adulation is equal to describe the extent of his various merits! It is too condescending perhaps to refute such folly as this. But we would just observe that if the propriety of the measure in question be established by direct arguments, these must be at least as conclusive against the character of those who oppose it, as their character can be against the measure.

The effect of such an argument is, to give men of good or reputed good character, the power of putting a negative on any question—not agreeable to their inclinations.

‘In every public trust, the legislator should, for the purpose of prevention, suppose the trustee disposed to break the trust in every imaginable way in which it would be possible for him to reap, from the breach of it, any personal advantage. This is the principle on which public institutions ought to be formed; and when it is applied to all men indiscriminately, it is injurious to none. The practical inference is, to oppose to such possible (and what will always be probable) breaches of trust every bar that can be opposed, consistently with the power requisite for the efficient and due discharge of the trust. Indeed, these arguments, drawn from the supposed virtues of men in power, are opposed to the first principles on which all laws proceed.

‘Such allegations of individual virtue are never supported by specific proof, are scarce ever susceptible of specific disproof; and specific disproof, if offered, could not be admitted

in either House of Parliament. If attempted elsewhere, the punishment would fall, not on the unworthy trustee, but on him by whom the unworthiness had been proved.' — (p. 125, 126.)

Fallacies of pretended Danger. — Imputation of bad design — of bad character — of bad motives — of inconsistency — of suspicious connections.

The object of this class of fallacies is to draw aside attention from the measure to the man, and this in such a manner, that, for some real or supposed defect in the author of the measure, a corresponding defect shall be imputed to the measure itself. Thus 'the author of the measure entertains a bad design; therefore the measure is bad. His character is bad, therefore the measure is bad, his motive is bad, I will vote against the measure. On former occasions, this same person who proposed the measure was its enemy, therefore the measure is bad. He is on a footing of intimacy with this or that dangerous man, or has been seen in his company, or is suspected of entertaining some of his opinions, therefore the measure is bad. He bears a name that at a former period was borne by a set of men now no more, by whom bad principles were entertained — therefore the measure is bad!'

Now, if the measure be really inexpedient, why not at once show it to be so? If the measure is good, is it bad because a bad man is its author? If bad, is it good because a good man has produced it? What are these arguments, but to say to the assembly who are to be the judges of any measure, that their imbecility is too great to allow them to judge of the measure by its own merits, and that they must have recourse to distant and feebler probabilities for that purpose.

'In proportion to the degree of efficiency with which a

man suffers these instruments of deception to operate upon his mind, he enables bad men to exercise over him a sort of power, the thought of which ought to cover him with shame. Allow this argument the effect of a conclusive one, you put it into the power of any man to draw you at pleasure from the support of every measure, which in your own eyes is good, to force you to give your support to any and every measure which in your own eyes is bad. Is it good? — the bad man embraces it, and, by the supposition, you reject it. Is it bad? — he vituperates it, and that suffices for driving you into its embrace. You split upon the rocks, because he has avoided them; you miss the harbour, because he has steered into it! Give yourself up to any such blind antipathy, you are no less in the power of your adversaries, than if, by a correspondently irrational sympathy and obsequiousness, you put yourself into the power of your friends.' — (p. 132, 133.)

' Besides, nothing but laborious application, and a clear and comprehensive intellect, can enable a man on any given subject to employ successfully relevant arguments drawn from the subject itself. To employ personalities, neither labour nor intellect is required. In this sort of contest, the most idle and the most ignorant are quite on a par with, if not superior to, the most industrious and the most highly-gifted individuals. Nothing can be more convenient for those who would speak without the trouble of thinking. The same ideas are brought forward over and over again, and all that is required is to vary the turn of expression. Close and relevant arguments have very little hold on the passions, and serve rather to quell than to inflame them; while in personalities there is always something stimulant, whether on the part of him who praises or him who blames. Praise forms a kind of connection between the party praising and the party praised, and vituperation gives an air of courage and independence to the party who blames.

' Ignorance and indolence, friendship and enmity, concurring and conflicting interest, servility and independence, all conspire to give personalities the ascendancy they so unhappily maintain. The more we lie under the influence of our

own passions, the more we rely on others being affected in a similar degree. A man who can repel these injuries with dignity, may often convert them into triumph: "Strike me, but hear," says he, and the fury of his antagonist redounds to his own discomfiture.' — (p. 141, 142.)

No Innovation! — To say that all new things are bad, is to say that all old things were bad in their commencement: for of all the old things ever seen or heard of, there is not one that was not once new. Whatever is now establishment was once innovation. The first inventor of pews and parish clerks, was no doubt considered as a Jacobin in his day. Judges, juries, criers of the court, are all the inventions of ardent spirits, who filled the world with alarm, and were considered as the great precursors of ruin and dissolution. No inoculation, no turnpikes, no reading, no writing, no popery! The fool sayeth in his heart, and crieth with his mouth, 'I will have nothing new!'

Fallacy of Distrust, 'What's at the Bottom?' — This fallacy begins with a virtual admission of the propriety of the measure considered in itself, and thus demonstrates its own futility, and cuts up from under itself the ground which it endeavours to make. A measure is to be rejected for something that, by bare possibility, may be found amiss in some other measure! This is vicarious reprobation; upon this principle Herod instituted his massacre. It is the argument of a driveller to other drivellers, who says, We are not able to decide upon the evil when it arises — our only safe way is to act upon the general apprehension of evil.

Official Malefactor's Screen. — 'Attack us — you attack Government.'

If this notion is acceded to, every one who derives

at present any advantage from misrule has it in fee-simple ; and all abuses, present and future, are without remedy. So long as there is any thing amiss in conducting the business of government, so long as it can be made better, there can be no other mode of bringing it nearer to perfection, than the indication of such imperfections as at the time being exist.

‘ But so far is it from being true that a man’s aversion or contempt for the hands by which the powers of Government, or even for the system under which they are exercised, is a proof of his aversion or contempt towards Government itself, that, even in proportion to the strength of that aversion or contempt, it is a proof of the opposite affection. What, in consequence of such contempt or aversion he wishes for, is, not that there be no hands at all to exercise these powers, but that the hands may be better regulated ; — not that those powers should not be exercised at all, but that they should be better exercised ; — not that, in the exercise of them, no rules at all should be pursued, but that the rules by which they are exercised should be a better set of rules.

‘ All government is a trust ; every branch of government is a trust ; and immemorially acknowledged so to be : it is only by the magnitude of the scale that public differ from private trusts. I complain of the conduct of a person in the character of guardian, as domestic guardian, having the care of a minor or insane person. In so doing, do I say that guardianship is a bad institution ? Does it enter into the head of any one to suspect me of so doing ? I complain of an individual in the character of a commercial agent, or assignee of the effects of an insolvent. In so doing, do I say that commercial agency is a bad thing ? that the practice of vesting in the hands of trustees or assignees the effects of an insolvent, for the purpose of their being divided among his creditors, is a bad practice ? Does any such conceit ever enter into the head of man, as that of suspecting me of so doing ?’ — (p. 162, 163.)

There are no complaints against government in Turkey — no motions in Parliament, no Morning Chronicles, and no Edinburgh Reviews: yet, of all countries in the world, it is that in which revolts and revolutions are the most frequent.

It is so far from true, that no good government can exist consistently with such disclosure, that no good government can exist without it. It is quite obvious, to all who are capable of reflection, that by no other means than by lowering the governors in the estimation of the people, can there be hope or chance of beneficial change. To infer from this wise endeavour to lessen the existing rulers in the estimation of the people, a wish of dissolving the government is either artifice or error. The physician who intentionally weakens the patient by bleeding him has no intention he should perish.

The greater the quantity of respect a man receives, independently of good conduct, the less good is his behaviour likely to be. It is the interest, therefore, of the public, in the case of each, to see that the respect paid to him should, as completely as possible, depend upon the goodness of his behaviour in the execution of his trust. But it is, on the contrary, the interest of the trustee, that the respect, the money, or any other advantage he receives in virtue of his office, should be as great, as secure, and as independent of conduct as possible. Soldiers expect to be shot at; public men must expect to be attacked, and sometimes unjustly. It keeps up the habit of considering their conduct as exposed to scrutiny; on the part of the people at large, it keeps alive the expectation of witnessing such attacks, and the habit of looking out for them. The friends and supporters of government have always greater facility in keeping

and raising it up, than its adversaries have for lowering it.

Accusation-scarer's Device. — '*Infamy must attach somewhere.*'

This fallacy consists in representing the character of a calumniator as necessarily and justly attaching upon him who, having made a charge of misconduct against any persons possessed of political power or influence, fails of producing evidence sufficient for their conviction.

'If taken as a general proposition, applying to all public accusations, nothing can be more mischievous as well as fallacious. Supposing the charge unfounded, the delivery of it may have been accompanied with *mala fides* (consciousness of its injustice), with *temerity* only, or it may have been perfectly blameless. It is in the first case alone that infamy can with propriety attach upon him who brings it forward. A charge really groundless may have been honestly *believed* to be well founded, *i. e.* believed with a sort of provisional credence, sufficient for the purpose of engaging a man to do his part towards the bringing about an investigation, but without sufficient reasons. But a charge may be perfectly groundless without attaching the smallest particle of blame upon him who brings it forward. Suppose him to have heard from one or more, presenting themselves to him in the character of percipient witnesses, a story, which, either *in toto*, or perhaps only in *circumstances*, though in circumstances of the most material importance, should prove false and mendacious — how is the person who hears this, and acts accordingly, to blame? What sagacity can enable a man previously to legal investigation, a man who has no power that can enable him to insure correctness or completeness on the part of this extrajudicial testimony, to guard against deception in such a case?' — (p. 185, 186.)

Fallacy of false Consolation. — '*What is the matter with you? — What would you have? Look*

at the people there, and there ; think how much better off you are than they are. Your prosperity and liberty are objects of their envy ; your institutions models of their imitation.'

It is not the desire to look to the bright side that is blamed : but when a particular suffering, produced by an assigned cause, has been pointed out, the object of many apologists is to turn the eyes of inquirers and judges into any other quarter in preference. If a man's tenants were to come with a general encomium on the prosperity of the country, instead of a specified sum, would it be accepted? In a court of justice, in an action for damages, did ever any such device occur as that of pleading assets in the hands of a third person? There is, in fact, no country so poor and so wretched in every element of prosperity, in which matter for this argument might not be found. Were the prosperity of the country tenfold as great as at present, the absurdity of the argument would not in the least degree be lessened. Why should the smallest evil be endured, which can be cured ; because others suffer patiently under greater evils? Should the smallest improvement attainable be neglected, because others remain contented in a state of still greater inferiority?

' Seriously and pointedly in the character of a bar to any measure of relief, no, nor to the most trivial improvement, can it ever be employed. Suppose a bill brought in for converting an impassable road any where into a passable one, would any man stand up to oppose it who could find nothing better to urge against it than the multitude and goodness of the roads we have already? No: when in the character of a serious bar to the measure in hand, be that measure what it may, an argument so palpably inapplicable is employed, it can only be for the purpose of creating a diversion ;—of turning aside

the minds of men from the subject really in hand, to a picture, which by its beauty, it is hoped, may engross the attention of the assembly, and make them forget for the moment for what purpose they came there.' — (p. 196, 197.)

The Quietist, or no Complaint. — 'A new law or measure being proposed in the character of a remedy for some incontestable abuse or evil, an objection is frequently started to the following effect: — "The measure is unnecessary. Nobody complains of disorder in that shape, in which it is the aim of your measure to propose a remedy to it. But even when *no* cause of complaint has been found to exist, especially under governments which admit of complaints, men have in general not been slow to complain; much less where any just cause of complaint has existed." The argument amounts to this: — Nobody complains, therefore nobody suffers. It amounts to a *veto* on all measures of precaution or prevention, and goes to establish a maxim in legislation directly opposed to the most ordinary prudence of common life; — it enjoins us to build no parapets to a bridge till the number of accidents has raised an universal clamour.' — (p. 190, 191.)

Procrastinator's Argument, — '*Wait a little, this is not the time.*'

This is the common argument of men, who, being in reality hostile to a measure, are ashamed or afraid of appearing to be so. *To-day* is the plea — *eternal exclusion* commonly the object. It is the same sort of quirk as a plea of abatement in law — which is never employed but on the side of a dishonest defendant, whose hope it is to obtain an ultimate triumph, by overwhelming his adversary with despair, impoverishment, and lassitude. Which is the properest day to do good? which is the properest day to remove a nuisance? we answer, the very first day a man can be found to propose the removal of it; and whoever opposes the removal of it on that day will (if he dare) oppose it on every other. There is in the

minds of many feeble friends to virtue and improvement, an imaginary period for the removal of evils, which it would certainly be worth while to wait for, if there was the smallest chance of its ever arriving — a period of unexampled peace and prosperity, when a patriotic king and an enlightened mob united their ardent efforts for the amelioration of human affairs; when the oppressor is as delighted to give up the oppression, as the oppressed is to be liberated from it; when the difficulty and the unpopularity would be to continue the evil, not to abolish it! These are the periods when fair weather philosophers are willing to venture out, and hazard a little for the general good. But the history of human nature is so contrary to all this, that almost all improvements are made after the bitterest resistance, and in the midst of tumults and civil violence — the worst period at which they can be made, compared to which any period is eligible, and should be seized hold of by the friends of salutary reform.

Snail's Pace Argument. — ‘One thing at a time! Not too fast! Slow and sure!’ — Importance of the business — extreme difficulty of the business — danger of innovation — need of caution and circumspection — impossibility of foreseeing all consequences — danger of precipitation — every thing should be gradual — one thing at a time — this is not the time — great occupation at present — wait for more leisure — people well satisfied — no petitions presented — no complaints heard — no such mischief has yet taken place — stay till it has taken place! — Such is the prattle which the magpye in office who, understanding nothing, yet understands that he must have something to say on every subject, shouts out among his auditors as a succedaneum to thought.’ — (p. 203, 204.)

Vague Generalities. — Vague Generalities comprehend a numerous class of fallacies resorted to by those who, in preference to the determinate expres-

sions which they might use, adopt others more vague and indeterminate.

Take, for instance, the terms, government, laws, morals, religion. Every body will admit that there are in the world bad governments, bad laws, bad morals, and bad religions. The bare circumstance, therefore, of being engaged in exposing the defects of government, law, morals, and religion, does not of itself afford the slightest presumption that a writer is engaged in any thing blamable. If his attack is only directed against that which is bad in each, his efforts may be productive of good to any extent. This essential distinction, however, the defender of abuses uniformly takes care to keep out of sight; and boldly imputes to his antagonists an intention to subvert all *government, law, morals, and religion*. Propose any thing with a view to the improvement of the existing practice, in relation to law, government, and religion, he will treat you with an oration upon the necessity and utility of law, government, and religion. Among the several cloudy appellatives which have been commonly employed as cloaks for misgovernment, there is none more conspicuous in this atmosphere of illusion than the word order. As often as any measure is brought forward which has for its object to lessen the sacrifice made by the many to the few, *social order* is the phrase commonly opposed to its progress.

‘ By a defalcation made from any part of the mass of factitious delay, vexation, and expense, out of which, and in proportion to which, lawyers’ profit is made to flow — by any defalcation made from the mass of needless and worse than useless emolument to office, with or without service or pretence of service — by any addition endeavoured to be made to the quantity, or improvement in the quality of service rendered, or time bestowed in service rendered in return for

such emolument—by every endeavour that has for its object the persuading the people to place their fate at the disposal of any other agents than those in whose hands breach of trust is certain, due fulfilment of it morally and physically impossible—*social order* is said to be endangered, and threatened to be destroyed.' — (p. 234.)

In the same way *Establishment* is a word in use to protect the bad parts of establishments, by charging those who wish to remove or alter them, with a wish to subvert all good establishments.

Mischievous fallacies also circulate from the convertible use of what Mr. B. is pleased to call dyslogistic and eulogistic terms. Thus a vast concern is expressed for the *liberty of the press*, and the utmost abhorrence for its *licentiousness* : but then, by the *licentiousness* of the press is meant every disclosure by which any abuse is brought to light and exposed to shame — by the *liberty of the press* is meant only publications from which no such inconvenience is to be apprehended ; and the fallacy consists in employing the sham approbation of liberty as a mask for the real opposition to all free discussion. To write a pamphlet so ill that nobody will read it ; to animadvert in terms so weak and insipid upon great evils, that no disgust is excited at the vice, and no apprehension in the evil-doer, is a fair use of the liberty of the press, and is not only pardoned by the friends of government, but draws from them the most fervent eulogium. The *licentiousness* of the press consists in doing the thing boldly and well, in striking terror into the guilty, and in rousing the attention of the public to the defence of their highest interests. This is the *licentiousness* of the press held in the greatest horror by timid and corrupt men, and punished by semianimous semicadaverous judges, with a captivity

of many years. In the same manner the dyslogistic and eulogistic fallacies are used in the case of reform.

‘Between all abuses whatsoever, there exists that connexion — between all persons who see each of them, any one abuse in which an advantage results to himself, there exists, in point of interest, that close and sufficiently understood connexion, of which intimation has been given already. To no one abuse can correction be administered without endangering the existence of every other.

‘If, then, with this inward determination not to suffer, so far as depends upon himself, the adoption of any reform which he is able to prevent, it should seem to him necessary or advisable to put on for a cover, the profession or appearance of a desire to contribute to such reform — in pursuance of the device or fallacy here in question, he will represent that which goes by the name of reform as distinguishable into two species; one of them a fit subject for approbation, the other for disapprobation. That which he thus professes to have marked for approbation, he will accordingly, for the expression of such approbation, characterise by some adjunct of the *eulogistic* cast, such as moderate, for example, or temperate, or practical, or practicable.

‘To the other of these nominally distinct species he will, at the same time, attach some adjunct of the *dyslogistic* cast, such as violent, intemperate, extravagant, outrageous, theoretical, speculative, and so forth.

‘Thus, then, in profession and to appearance, there are in his conception of the matter two distinct and opposite species of reform, to one of which his approbation, to the other his disapprobation, is attached. But the species to which his approbation is attached is an *empty* species — a species in which no individual is, or is intended to be, contained.

‘The species to which his disapprobation is attached is, on the contrary, a crowded species, a receptacle in which the whole contents of the *genus* — of the genus *Reform* are intended to be included.’ — (p. 277, 278.)

Anti-rational Fallacies. — When reason is in oppo-

sition to a man's interests, his study will naturally be to render the faculty itself, and whatever issues from it, an object of hatred and contempt. The sarcasm and other figures of speech employed on the occasion are directed not merely against reason but against thought, as if there were something in the faculty of thought that rendered the exercise of it incompatible with useful and successful practice. Sometimes a plan, which would not suit the official person's interest, is without more ado pronounced a *speculative* one; and, by this observation, all need of rational and deliberate discussion is considered to be superseded. The first effort of the corruptionist is to fix the epithet *Speculative* upon any scheme which he thinks may cherish the spirit of reform. The expression is hailed with the greatest delight by bad and feeble men, and repeated with the most unwearied energy; and, to the word *Speculative*, by way of reinforcement, are added, *theoretical, visionary, chimerical, romantic, Utopian*.

'Sometimes a distinction is taken, and thereupon a concession made. The plan is *good in theory*, but it would be *bad in practice*, i. e. its being good in theory does not hinder its being bad in practice.

'Sometimes, as if in consequence of a farther progress made in the art of irrationality, the plan is pronounced to be *too good to be practicable*; and its being so good as it is, is thus represented as the very cause of its being bad in practice.

'In short, such is the perfection at which this art is at length arrived, that the very circumstance of a plan's being susceptible of the appellation of a *plan*, has been gravely stated as a circumstance sufficient to warrant its being rejected: rejected, if not with hatred, at any rate with a sort of accompaniment, which, to the million, is commonly felt still more galling — with contempt.' — (p. 296.)

There is a propensity to push theory too far ; but what is the just inference ? not that theoretical propositions (*i. e.* all propositions of any considerable comprehension or extent) should, from such their extent, be considered to be false *in toto*, but only that, in the particular case, inquiry should be made whether, supposing the proposition to be in the character of a rule generally true, an exception ought to be taken out of it. It might almost be imagined that there was something wicked or unwise in the exercise of thought ; for every body feels a necessity for disclaiming it. ‘I am not given to speculation, I am no friend to theories.’ Can a man disclaim theory, can he disclaim speculation, without disclaiming thought ?

The description of persons by whom this fallacy is chiefly employed are those who, regarding a plan as adverse to their interests, and not finding it on the ground of general utility exposed to any preponderant objection, have recourse to this objection in the character of an instrument of contempt, in the view of preventing those from looking into it who might have been otherwise disposed. It is by the fear of seeing it practised that they are drawn to speak of it as impracticable. ‘Upon the face of it (exclaims some feeble or pensioned gentleman), it carries that air of plausibility, that, if you were not upon your guard, might engage you to bestow more or less of attention upon it ; but were you to take the trouble, you would find that (as it is with all these plans which promise so much), practicability would at last be wanting to it. To save yourself from this trouble, the wisest course you can take is to put the plan aside, and to think no more about the matter.’ This is always accompanied with a peculiar grin of triumph.

The whole of these fallacies may be gathered together in a little oration, which we will denominate the

Noodle's Oration.

‘What would our ancestors say to this, Sir? How does this measure tally with their institutions? How does it agree with their experience? Are we to put the wisdom of yesterday in competition with the wisdom of centuries? (*Hear, hear!*) Is beardless youth to show no respect for the decisions of mature age? (*Loud cries of hear! hear!*) If this measure is right, would it have escaped the wisdom of those Saxon progenitors to whom we are indebted for so many of our best political institutions? Would the Dane have past it over? Would the Norman have rejected it? Would such a notable discovery have been reserved for these modern and degenerate times? Besides, Sir, if the measure itself is good, I ask the honourable gentleman if this is the time for carrying it into execution—whether, in fact, a more unfortunate period could have been selected than that which he has chosen? If this were an ordinary measure, I should not oppose it with so much vehemence; but, Sir, it calls in question the wisdom of an irrevocable law—of a law past at the memorable period of the Revolution. What right have we, Sir, to break down this firm column, on which the great men of that day stamp a character of eternity? Are not all authorities against this measure, Pitt, Fox, Cicero, and the Attorney and Solicitor General? The proposition is new, Sir; it is the first time it was ever heard in this House. I am not prepared, Sir—this House is not prepared, to receive it. The measure implies a distrust of his Majesty’s government; their disapproval is sufficient

to warrant opposition. Precaution only is requisite where danger is apprehended. Here the high character of the individuals in question is a sufficient guarantee against any ground of alarm. Give not, then, your sanction to this measure; for, whatever be its character, if you do give your sanction to it, the same man by whom this is proposed, will propose to you others to which it will be impossible to give your consent. I care very little, Sir, for the ostensible measure; but what is there behind? What are the honourable gentleman's future schemes? If we pass this bill, what fresh concessions may he not require? What farther degradation is he planning for his country? Talk of evil and inconvenience, Sir! look to other countries—study other aggregations and societies of men, and then see whether the laws of this country demand a remedy, or deserve a panegyric. Was the honourable gentleman (let me ask him) always of this way of thinking? Do I not remember when he was the advocate in this House of very opposite opinions? I not only quarrel with his present sentiments, Sir, but I declare very frankly I do not like the party with which he acts. If his own motives were as pure as possible, they cannot but suffer contamination from those with whom he is politically associated. This measure may be a boon to the constitution, but I will accept no favour to the constitution from such hands. (*Loud cries of hear! hear!*) I profess myself, Sir, an honest and upright member of the British Parliament, and I am not afraid to profess myself an enemy to all change, and all innovation. I am satisfied with things as they are; and it will be my pride and pleasure to hand down this country to my children as I received it from those who preceded me. The honourable gentleman pre-

tends to justify the severity with which he has attacked the Noble Lord who presides in the Court of Chancery. But I say such attacks are pregnant with mischief to Government itself. Oppose Ministers, you oppose Government: disgrace Ministers, you disgrace Government: bring Ministers into contempt, you bring Government into contempt; and anarchy and civil war are the consequences. Besides, Sir, the measure is unnecessary. Nobody complains of disorder in that shape in which it is the aim of your measure to propose a remedy to it. The business is one of the greatest importance; there is need of the greatest caution and circumspection. Do not let us be precipitate, Sir; it is impossible to foresee all consequences. Every thing should be gradual; the example of a neighbouring nation should fill us with alarm! The honourable gentleman has taxed me with illiberality, Sir. I deny the charge. I hate innovation, but I love improvement. I am an enemy to the corruption of Government, but I defend its influence. I dread reform, but I dread it only when it is intemperate. I consider the liberty of the press as the great Palladium of the Constitution; but, at the same time, I hold the licentiousness of the press in the greatest abhorrence. Nobody is more conscious than I am of the splendid abilities of the honourable mover, but I tell him at once, his scheme is too good to be practicable. It savours of Utopia. It looks well in theory, but it won't do in practice. It will not do, I repeat, Sir, in practice; and so the advocates of the measure will find, if, unfortunately, it should find its way through Parliament (*cheers*). The source of that corruption to which the honourable member alludes, is in the minds of the people; so rank and extensive is that corruption, that no poli-

tical reform can have any effect in removing it. Instead of reforming others — instead of reforming the State, the Constitution, and every thing that is most excellent, let each man reform himself! let him look at home, he will find there enough to do, without looking abroad, and aiming at what is out of his power (*loud cheers*). And now, Sir, as it is frequently the custom in this House to end with a quotation, and as the gentleman who preceded me in the debate, has anticipated me in my favourite quotation of the “Strong pull and the long pull,” I shall end with the memorable words of the assembled Barons—*Nolumus leges Angliæ mutari.*’

‘ Upon the whole, the following are the characters which appertain in common to all the several arguments here distinguished by the name of fallacies : —

‘ 1. Whatsoever be the measure in hand, they are, with relation to it, irrelevant.

‘ 2. They are all of them such, that the application of these irrelevant arguments affords a presumption either of the weakness or total absence of relevant arguments on the side on which they are employed.

‘ 3. To any good purpose they are all of them unnecessary.

‘ 4. They are all of them not only capable of being applied, but actually in the habit of being applied, and with advantage, to bad purposes; viz. to the obstruction and defeat of all such measures as have for their object the removal of the abuses or other imperfections still discernible in the frame and practice of the government.

‘ 5. By means of their irrelevancy, they all of them consume and misapply time, thereby obstructing the course and retarding the progress of all necessary and useful business.

‘ 6. By that irritative quality which, in virtue of their irrelevancy, with the improbity or weakness of which it is indicative, they possess, all of them, in a degree more or less

considerable, but in a more particular degree such of them as consist in personalities, they are productive of ill-humour, which in some instances has been productive of bloodshed, and is continually productive, as above, of waste of time and hinderance of business.

‘7. On the part of those who, whether in spoken or written discourses, give utterance to them, they are indicative either of improbity or intellectual weakness, or of a contempt for the understanding of those on whose minds they are destined to operate.

‘8. On the part of those on whom they operate, they are indicative of intellectual weakness; and on the part of those in and by whom they are pretended to operate, they are indicative of improbity, viz. in the shape of insincerity.

‘The practical conclusion is, that in proportion as the acceptance, and thence the utterance, of them can be prevented, the understanding of the public will be strengthened, the morals of the public will be purified, and the practice of government improved.’ — (p. 359, 360.)

WATERTON. (E. REVIEW, 1826.)

Wanderings in South America, the North-West of the United States, and the Antilles, in the Years 1812, 1816, 1820, and 1824; with Original Instructions for the perfect Preservation of Birds, &c. for Cabinets of Natural History. By Charles Waterton, Esq. London, Mawman. 4to. 1825.

MR. WATERTON is a Roman Catholic gentleman of Yorkshire, of good fortune, who, instead of passing his life at balls and assemblies, has preferred living with Indians and monkeys in the forests of Guiana. He appears in early life to have been seized with an unconquerable aversion to Piccadilly, and to that train of meteorological questions and answers, which forms the great staple of polite English conversation. From a dislike to the regular form of a journal, he throws his travels into detached pieces, which he, rather affectedly, calls *Wanderings*—and of which we shall proceed to give some account.

His first Wandering was in the year 1812, through the wilds of Demerara and Essequibo, a part of *ci-devant* Dutch Guiana, in South America. The sun exhausted him by day, the mosquitoes bit him by night; but on went Mr. Charles Waterton!

The first thing which strikes us in this extraordinary chronicle, is the genuine zeal and inexhaustible delight with which all the barbarous countries he visits are described. He seems to love the forests, the tigers, and the apes;—to be rejoiced that he is the only man there; that he has left his species far away; and is at last in the midst of his blessed ba-

boons ! He writes with a considerable degree of force and vigour ; and contrives to infuse into his reader that admiration of the great works, and undisturbed scenes of Nature, which animates his style, and has influenced his life and practice. There is something, too, to be highly respected and praised in the conduct of a country gentleman, who, instead of exhausting life in the chase, has dedicated a considerable portion of it to the pursuit of knowledge. There are so many temptations to complete idleness in the life of a country gentleman, so many examples of it, and so much loss to the community from it, that every exception from the practice is deserving of great praise. Some country gentlemen must remain to do the business of their counties ; but, in general, there are many more than are wanted ; and, generally speaking also, they are a class who should be stimulated to greater exertions. Sir Joseph Banks, a squire of large fortune in Lincolnshire, might have given up his existence to double-barrelled guns and persecutions of poachers—and all the benefits derived from his wealth, industry, and personal exertion in the cause of science, would have been lost to the community.

Mr. Waterton complains, that the trees of Guiana are not more than six yards in circumference—a magnitude in trees which it is not easy for a Scotch imagination to reach. Among these, pre-eminent in height rises the mora—upon whose top branches, when naked by age, or dried by accident, is perched the toucan, too high for the gun of the fowler ;—around this are the green heart, famous for hardness ; the tough hackea ; the ducalabali, surpassing mahogany ; the ebony and letter-wood, exceeding the most beautiful woods of the Old World ; the locust-

tree, yielding copal ; and the hayawa and olou-trees, furnishing sweet-smelling resin. Upon the top of the mora grows the fig-tree. The bush-rope joins tree and tree, so as to render the forest impervious, as, descending from on high, it takes root as soon as its extremity touches the ground, and appears like shrouds and stays supporting the mainmast of a line-of-battle ship.

Demerara yields to no country in the world in her birds. The mud is flaming with the scarlet curlew. At sunset, the pelicans return from the sea to the courada trees. Among the flowers are the humming-birds. The columbine, gallinaceous, and passerine tribes people the fruit-trees. At the close of day, the vampires, or winged-bats, suck the blood of the traveller, and cool him by the flap of their wings. Nor has Nature forgotten to amuse herself here in the composition of snakes :—the camoudi has been killed from thirty to forty feet long ; he does not act by venom, but by size and convolution. The Spaniards affirm that he grows to the length of eighty feet, and that he will swallow a bull ; but Spaniards love the superlative. There is a *whipsnake* of a beautiful green. The labarri snake of a dirty brown, who kills you in a few minutes. Every lovely colour under heaven is lavished upon the counachouchi, the most venomous of reptiles, and known by the name of the *bush-master*. Man and beast, says Mr. Waterton, fly before him, and allow him to pursue an undisputed path.

We consider the following description of the various sounds in these wild regions as very striking, and done with very considerable powers of style.

‘ He whose eye can distinguish the various beauties of uncultivated nature, and whose ear is not shut to the wild

sounds in the woods, will be delighted in passing up the river Demerara. Every now and then, the maam or tinamou sends forth one long and plaintive whistle from the depth of the forest, and then stops; whilst the yelping of the toucan, and the shrill voice of the bird called pi-pi-yo, is heard during the interval. The campanero never fails to attract the attention of the passenger: at a distance of nearly three miles you may hear this snow-white bird tolling every four or five minutes, like the distant convent bell. From six to nine in the morning, the forests resound with the mingled cries and strains of the feathered race; after this they gradually die away. From eleven to three all nature is hushed as in a midnight silence, and scarce a note is heard, saving that of the campanero and the pi-pi-yo; it is then that, oppressed by the solar heat, the birds retire to the thickest shade, and wait for the refreshing cool of evening.

‘At sundown the vampires, bats, and goatsuckers, dart from their lonely retreat, and skim along the trees on the river’s bank. The different kinds of frogs almost stun the ear with their hoarse and hollow sounding croaking, while the owls and goatsuckers lament and mourn all night long.

‘About two hours before daybreak you will hear the red monkey moaning as though in deep distress; the houtou, a solitary bird, and only found in the thickest recesses of the forest, distinctly articulates, “houtou, houtou,” in a low and plaintive tone, an hour before sunrise; the maam whistles about the same hour; the hannaquoi, pataca, and maroudi announce his near approach to the eastern horizon, and the parrots and paroquets confirm his arrival there.’—(p. 13—15.)

Our good Quixote of Demerara is a little too fond of apostrophising:—‘Traveller! dost thou think? Reader! dost thou imagine?’ Mr. Waterton should remember, that the whole merit of these violent deviations from common style depends upon their rarity, and that nothing does, for ten pages together, but the indicative mood. This fault gives an air of affectation to the writing of Mr. Waterton, which we

believe to be foreign from his character and nature. We do not wish to deprive him of these indulgences altogether ; but merely to put him upon an allowance, and upon such an allowance, as will give to these figures of speech the advantage of surprise and relief.

This gentleman's delight and exultation always appear to increase as he loses sight of European inventions, and comes to something purely Indian. Speaking of an Indian tribe, he says, —

‘ They had only one gun, and it appeared rusty and neglected ; but their poisoned weapons were in fine order. Their blow-pipes hung from the roof of the hut, carefully suspended by a silk grass cord ; and on taking a nearer view of them, no dust seemed to have collected there, nor had the spider spun the smallest web on them ; which showed that they were in constant use. The quivers were close by them, with the jaw-bone of the fish pirai tied by a string to their brim, and a small wicker-basket of wild cotton, which hung down to the centre : they were nearly full of poisoned arrows. It was with difficulty these Indians could be persuaded to part with any of the wourali poison, though a good price was offered for it : they gave us to understand that it was powder and shot to them, and very difficult to be procured.’ — (p. 34, 35.)

A wicker-basket of wild cotton, full of poisoned arrows, for shooting fish ! This is Indian with a vengeance. We fairly admit that, in the contemplation of such utensils, every trait of civilised life is completely and effectually banished.

One of the strange and fanciful objects of Mr. Waterton's journey was, to obtain a better knowledge of the composition and nature of the *Wourali* poison, the ingredient with which the Indians poison their arrows. In the wilds of Essequibo, far away from any European settlements, there is a tribe of Indians known by the name of *Macoushi*. The *Wourali*

poison is used by all the South American savages, betwixt the Amazon and the Oroonoque; but the Macoushi Indians manufacture it with the greatest skill, and of the greatest strength. A vine grows in the forest called Wourali; and from this vine, together with a good deal of nonsense and absurdity, the poison is prepared. When a native of Macoushia goes in quest of feathered game, he seldom carries his bow and arrows. It is the blow-pipe he then uses. The reed grows to an amazing length, as the part the Indians use is from 10 to 11 feet long, and no tapering can be perceived, one end being as thick as another; nor is there the slightest appearance of a knot or joint. The end which is applied to the mouth is tied round with a small silk grass cord. The arrow is from nine to ten inches long; it is made out of the leaf of a palm-tree, and pointed as sharp as a needle: about an inch of the pointed end is poisoned: the other end is burnt to make it still harder; and wild cotton is put round it for an inch and a half. The quiver holds from 500 to 600 arrows, is from 12 to 14 inches long, and in shape like a dice-box. With a quiver of these poisoned arrows over his shoulder, and his blow-pipe in his hand, the Indian stalks into the forest in quest of his feathered game.

‘ These generally sit high up in the tall and tufted trees, but still are not out of the Indian’s reach; for his blow-pipe, at its greatest elevation, will send an arrow three hundred feet. Silent as midnight he steals under them, and so cautiously does he tread the ground, that the fallen leaves rustle not beneath his feet. His ears are open to the least sound, while his eye, keen as that of the lynx, is employed in finding out the game in the thickest shade. Often he imitates their cry, and decoys them from tree to tree, till they are within range of his tube. Then taking a poisoned arrow from his

quiver, he puts it in the blow-pipe, and collects his breath for the fatal puff.

‘About two feet from the end through which he blows, there are fastened two teeth of the acouri, and these serve him for a sight. Silent and swift the arrow flies, and seldom fails to pierce the object at which it is sent. Sometimes the wounded bird remains in the same tree where it was shot, but in three minutes falls down at the Indian’s feet. Should he take wing, his flight is of short duration, and the Indian, following in the direction he has gone, is sure to find him dead.

‘It is natural to imagine that, when a slight wound only is inflicted, the game will make its escape. Far otherwise; the wourali poison instantaneously mixes with blood or water, so that if you wet your finger, and dash it along the poisoned arrow in the quickest manner possible, you are sure to carry off some of the poison.

‘Though three minutes generally elapse before the convulsions come on in the wounded bird, still a stupor evidently takes place sooner, and this stupor manifests itself by an apparent unwillingness in the bird to move. This was very visible in a dying fowl.’ — (p. 60—62.)

The flesh of the game is not in the slightest degree injured by the poison; nor does it appear to be corrupted sooner than that killed by the gun or knife. For the larger animals, an arrow with a poisoned spike is used.

‘Thus armed with deadly poison, and hungry as the hyæna, he ranges through the forest in quest of the wild beasts’ track. No hound can act a surer part. Without clothes to fetter him, or shoes to bind his feet, he observes the footsteps of the game, where an European eye could not discern the smallest vestige. He pursues it through all its turns and windings, with astonishing perseverance, and success generally crowns his efforts. The animal, after receiving the poisoned arrow, seldom retreats two hundred paces before it drops.

‘In passing over land from the Essequibo to the Demerara,

we fell in with a herd of wild hogs. Though encumbered with baggage, and fatigued with a hard day's walk, an Indian got his bow ready, and let fly a poisoned arrow at one of them. It entered the cheek-bone, and broke off. The wild hog was found quite dead about one hundred and seventy paces from the place where he had been shot. He afforded us an excellent and wholesome supper.'—(p. 65.)

Being a *Wourali* poison fancier, Mr. Waterton has recorded several instances of the power of his favourite drug. A sloth poisoned by it went gently to sleep, and died! a large ox, weighing one thousand pounds, was shot with three arrows; the poison took effect in 4 minutes, and in 25 minutes he was dead. The death seems to be very gentle; and resembles more a quiet apoplexy, brought on by hearing a long story, than any other kind of death. If an Indian happen to be wounded with one of these arrows, he considers it as certain death. We have reason to congratulate ourselves, that our method of terminating disputes is by sword and pistol, and not by these medicated pins; which, we presume, will become the weapons of gentlemen in the New Republics of South America.

The *second* Journey of Mr. Waterton, in the year 1816, was to Pernambuco, in the southern hemisphere, on the coast of Brazil, and from thence he proceeds to Cayenne. His plan was, to have ascended the Amazon from Para, and got into the Rio Negro, and from thence to have returned towards the source of the Essequibo, in order to examine the Crystal Mountains, and to look once more for Lake Parima, or the White Sea; but, on arriving at Cayenne, he found that to beat up the Amazon would be long and tedious; he left Cayenne, therefore, in an American ship for Paramaribo, went through the interior to

Coryntin, stopped a few days at New Amsterdam, and proceeded to Demerara.

‘Leave behind you’ (he says to the traveller) ‘your high-seasoned dishes, your wines, and your delicacies; carry nothing but what is necessary for your own comfort, and the object in view, and depend upon the skill of an Indian, or your own, for fish and game. A sheet, about twelve feet long, ten wide, painted, and with loop-holes on each side, will be of great service: in a few minutes you can suspend it betwixt two trees in the shape of a roof. Under this, in your hammock, you may defy the pelting shower, and sleep heedless of the dews of night. A hat, a shirt, and a light pair of trousers, will be all the raiment you require. Custom will soon teach you to tread lightly and barefoot on the little inequalities of the ground, and show you how to pass on, unwounded, amid the mantling briars.’—(p. 112, 113.)

Snakes are certainly an annoyance; but the snake, though high-spirited, is not quarrelsome; he considers his fangs to be given for defence, and not for annoyance, and never inflicts a wound but to defend existence. If you tread upon him, he puts you to death for your clumsiness, merely because he does not understand what your clumsiness means; and certainly a snake, who feels fourteen or fifteen stone stamping upon his tail, has little time for reflection, and may be allowed to be poisonous and peevish. American tigers generally run away — from which several respectable gentlemen in Parliament inferred, in the American war, that American soldiers would run away also!

The description of the birds is very animated and interesting; but how far does the gentle reader imagine the campanero may be heard, whose size is that of a jay? Perhaps 300 yards. Poor innocent, ignorant reader! unconscious of what Nature has

done in the forests of Cayenne, and measuring the force of tropical intonation by the sounds of a Scotch duck! The campanero may be heard three miles!—this single little bird being more powerful than the belfry of a cathedral, ringing for a new dean — just appointed on account of shabby politics, small understanding, and good family!

‘ The fifth species is the celebrated campanero of the Spaniards, called *dara* by the Indians, and bell-bird by the English. He is about the size of the jay. His plumage is white as snow. On his forehead rises a spiral tube nearly three inches long. It is jet black, dotted all over with small white feathers. It has a communication with the palate, and when filled with air, looks like a spire; when empty, it becomes pendulous. His note is loud and clear, like the sound of a bell, and may be heard at the distance of three miles. In the midst of these extensive wilds, generally on the dried top of an aged mora, almost out of gun reach, you will see the campanero. No sound or song from any of the winged inhabitants of the forest, not even the clearly pronounced “Whip-poor-Will,” from the goatsucker, cause such astonishment as the toll of the campanero.

‘ With many of the feathered race he pays the common tribute of a morning and an evening song; and even when the meridian sun has shut in silence the mouths of almost the whole of animated nature, the campanero still cheers the forest. You hear his toll, and then a pause for a minute, then another toll, and then a pause again, and then a toll, and again a pause.’—(p. 117, 118.)

It is impossible to contradict a gentleman who has been in the forests of Cayenne: but we are determined, as soon as a campanero is brought to England, to make him toll in a public place, and have the distance measured. The toucan has an enormous bill, makes a noise like a puppy dog, and lays his eggs in hollow trees. How astonishing are the freaks and

fancies of nature! To what purpose, we say, is a bird placed in the woods of Cayenne, with a bill a yard long, making a noise like a puppy dog, and laying eggs in hollow trees? The toucans, to be sure, might retort, to what purpose were gentlemen in Bond Street created? To what purpose were certain foolish prating Members of Parliament created?—pestering the House of Commons with their ignorance and folly, and impeding the business of the country? There is no end of such questions. So we will not enter into the metaphysics of the toucan. The houtou ranks high in beauty; his whole body is green, his wings and tail blue, his crown is of black and blue; he makes no nest, but rears his young in the sand.

‘The cassique, in size, is larger than the starling; he courts the society of man, but disdains to live by his labours. When nature calls for support, he repairs to the neighbouring forest, and there partakes of the store of fruits and seeds, which she has produced in abundance for her aërial tribes. When his repast is over, he returns to man, and pays the little tribute which he owes him for his protection; he takes his station on a tree close to his house; and there, for hours together, pours forth a succession of imitatives notes. His own song is sweet, but very short. If a toucan be yelping in the neighbourhood, he drops it, and imitates him. Then he will amuse his protector with the cries of the different species of the woodpecker; and when the sheep bleat, he will distinctly answer them. Then comes his own song again, and if a puppy dog or a guinea fowl interrupt him, he takes them off admirably, and by his different gestures during the time, you would conclude that he enjoys the sport.

‘The cassique is gregarious, and imitates any sound he hears with such exactness, that he goes by no other name than that of mocking-bird amongst the colonists.’—(p. 127, 128.)

There is no end to the extraordinary noises of the

forest of Cayenne. The woodpecker, in striking against the tree with his bill, makes a sound so loud, that Mr. Waterton says it reminds you more of a wood-cutter than a bird. While lying in your hammock, you hear the goatsucker lamenting like one in deep distress—a stranger would take it for a Weir murdered by Thurtell.

‘Suppose yourself in hopeless sorrow, begin with a high loud note, and pronounce, “ha, ha, ha, ha, ha, ha,” each note lower and lower, till the last is scarcely heard, pausing a moment or two betwixt every note, and you will have some idea of the moaning of the largest goatsucker in Demerara.’ —(p. 141.)

One species of the goatsucker cries, ‘Who are you? who are you?’ Another exclaims, ‘Work away, work away?’ A third, ‘Willy come go, Willy come go.’ A fourth, ‘Whip poor Will, whip poor Will.’ It is very flattering to us that they should all speak *English*!—though we cannot much commend the elegance of their selections. The Indians never destroy these birds, believing them to be the servants of Jumbo, the African devil.

Great travellers are very fond of triumphing over civilised life; and Mr. Waterton does not omit the opportunity of remarking, that nobody ever stopt him in the forests of Cayenne to ask him for his license, or to inquire if he had an hundred a year, or to take away his gun, or to dispute the limits of a manor, or to threaten him with a tropical justice of the peace. We hope, however, that in this point we are on the eve of improvement. Mr. Peel, who is a man of high character and principles, may depend upon it that the time is come for his interference, and that it will be a loss of reputation to him not to interfere.

If any one else can and will carry an alteration through Parliament, there is no occasion that the hand of Government should appear; but some hand *must* appear. The common people are becoming ferocious, and the perdricide criminals are more numerous than the violators of all the branches of the Decalogue.

‘The king of the vultures is very handsome, and seems to be the only bird which claims regal honours from a surrounding tribe. It is a fact beyond all dispute, that when the scent of carrion has drawn together hundreds of the common vultures, they all retire from the carcass as soon as the king of the vultures makes his appearance. When his majesty has satisfied the cravings of his royal stomach with the choicest bits from the most stinking and corrupted parts, he generally retires to a neighbouring tree, and then the common vultures return in crowds to gobble down his leavings. The Indians, as well as the whites, have observed this; for when one of them, who has learned a little English, sees the king, and wishes you to have a proper notion of the bird, he says, “There is the governor of the carrion crows.”’

‘Now, the Indians have never heard of a personage in Demerara higher than that of governor; and the colonists, through a common mistake, call the vultures carrion crows. Hence the Indian, in order to express the dominion of this bird over the common vultures, tells you he is governor of the carrion crows. The Spaniards have also observed it, for, through all the Spanish Main, he is called Rey de Zamuros, king of the vultures.’—(p. 146.)

This, we think, explains satisfactorily the origin of kingly government. As men have ‘learnt from the dog the physic of the field,’ they may probably have learnt from the vulture those high lessons of policy upon which, in Europe, we suppose the whole happiness of society, and the very existence of the human race, to depend.

Just before his third journey, Mr. Waterton takes

leave of Sir Joseph Banks, and speaks of him with affectionate regret. 'I saw,' (says Mr. W.) 'with sorrow, that death was going to rob us of him. We talked of stuffing quadrupeds; I agreed that the lips and nose ought to be cut off, and stuffed with wax.' This is the way great naturalists take an eternal farewell of each other! Upon stuffing animals, however, we have a word to say. Mr. Waterton has placed at the head of his book the picture of what he is pleased to consider a nondescript species of monkey. In this exhibition our author is surely abusing his stuffing talents, and laughing at the public. It is clearly the head of a Master in Chancery—whom we have often seen backing in the House of Commons after he has delivered his message. It is foolish thus to trifle with science and natural history. Mr. Waterton gives an interesting account of the sloth, an animal of which he appears to be fond, and whose habits he has studied with peculiar attention.

'Some years ago I kept a sloth in my room for several months. I often took him out of the house and placed him upon the ground, in order to have an opportunity of observing his motions. If the ground were rough, he would pull himself forwards, by means of his fore legs, at a pretty good pace; and he invariably shaped his course towards the nearest tree. But if I put him upon a smooth and well-trodden part of the road, he appeared to be in trouble and distress: his favourite abode was the back of a chair; and after getting all his legs in a line upon the topmost part of it, he would hang there for hours together, and often, with a low and inward cry, would seem to invite me to take notice of him.'—(p. 164.)

The sloth, in its wild state, spends its life in trees, and never leaves them but from force or accident. The eagle to the sky, the mole to the ground, the sloth to the tree; but what is most extraordinary, he

lives not *upon* the branches, but *under* them. He moves suspended, rests suspended, sleeps suspended, and passes his life in suspense—like a young clergyman distantly related to a bishop. Strings of ants may be observed, says our good traveller, a mile long, each carrying in its mouth a green leaf the size of a sixpence! he does not say whether this is a loyal procession, like Oak-apple Day, or for what purpose these leaves are carried; but it appears, while they are carrying the leaves, that three sorts of ant-bears are busy in eating them. The habits of the largest of these three animals are curious, and to us new. We recommend the account to the attention of the reader.

‘ He is chiefly found in the inmost recesses of the forest, and seems partial to the low and swampy parts near creeks, where the Troely tree grows. There he goes up and down in quest of ants, of which there is never the least scarcity; so that he soon obtains a sufficient supply of food, with very little trouble. He cannot travel fast; man is superior to him in speed. Without swiftness to enable him to escape from his enemies, without teeth, the possession of which would assist him in self-defence, and without the power of burrowing in the ground, by which he might conceal himself from his pursuers, he still is capable of ranging through these wilds in perfect safety; nor does he fear the fatal pressure of the serpent’s fold, or the teeth of the famished jaguar. Nature has formed his fore legs wonderfully thick, and strong, and muscular, and armed his feet with three tremendous sharp and crooked claws. Whenever he seizes an animal with these formidable weapons, he hugs it close to his body and keeps it there till it dies through pressure, or through want of food. Nor does the ant-bear, in the mean time, suffer much from loss of aliment, as it is a well-known fact, that he can go longer without food than perhaps any other animal, except the land tortoise. His skin is of a texture that perfectly resists the bite of a dog; his hinder parts are protected by thick

and shaggy hair, while his immense tail is large enough to cover his whole body.

‘The Indians have a great dread of coming in contact with the ant-bear; and after disabling him in the chase, never think of approaching him till he be quite dead.’—(p. 171, 172.)

The vampire measures about 26 inches from wing to wing. There are two species, large and small. The large suck men, and the smaller birds. Mr. W. saw some fowls which had been sucked the night before, and they were scarcely able to walk.

‘Some years ago I went to the river Paumaron with a Scotch gentleman, by name Tarbet. We hung our hammocks in the thatched loft of a planter’s house. Next morning I heard this gentleman muttering in his hammock, and now and then letting fall an imprecation or two, just about the time he ought to have been saying his morning prayers. “What is the matter, Sir?” said I, softly; “is any thing amiss?” “What’s the matter?” answered he, surlily; “why, the vampires have been sucking me to death.” As soon as there was light enough, I went to his hammock, and saw it much stained with blood. “There,” said he, thrusting his foot out of the hammock, “see how these infernal imps have been drawing my life’s blood.” On examining his foot, I found the vampire had tapped his great toe: there was a wound somewhat less than that made by a leech; the blood was still oozing from it; I conjectured he might have lost from ten to twelve ounces of blood. Whilst examining it, I think I put him into a worse humour by remarking, that an European surgeon would not have been so generous as to have blooded him without making a charge. He looked up in my face, but did not say a word: I saw he was of opinion that I had better have spared this piece of ill-timed levity.’—(p. 176, 177.)

The story which follows this account is vulgar, unworthy of Mr. Waterton, and should have been omitted.

Every animal has his enemies. The land tortoise has two enemies, man, and the boa constrictor. The

natural defence of the tortoise is to draw himself up in his shell, and to remain quiet. In this state, the tiger, however famished, can do nothing with him, for the shell is too strong for the stroke of his paw. Man, however, takes him home and roasts him—and the boa constrictor swallows him whole, shell and all, and consumes him slowly in the interior, as the Court of Chancery does a great estate.

The danger seems to be much less with snakes and wild beasts, if you conduct yourself like a gentleman, and are not abruptly intrusive. If you will pass on gently, you may walk unhurt within a yard of the Labairi snake, who would put you to death if you rushed upon him. The taguan knocks you down with a blow of his paw, if suddenly interrupted, but will run away, if you will give him time to do so. In short, most animals look upon man as a very ugly customer; and, unless sorely pressed for food, or from fear of their own safety, are not fond of attacking him. Mr. Waterton, though much given to sentiment, made a Labairi snake bite itself, but no bad consequences ensued—nor would any bad consequences ensue, if a court-martial were to order a sinful soldier to give himself a thousand lashes. It is barely possible that the snake had some faint idea whom and what he was biting.

Insects are the curse of tropical climates. The *bête rouge* lays the foundation of a tremendous ulcer. In a moment you are covered with ticks. Chigoes bury themselves in your flesh, and hatch a large colony of young chigoes in a few hours. They will not live together, but every chigoe sets up a separate ulcer, and has his own private portion of pus. Flies get entry into your mouth, into your eyes, into your nose; you eat flies, drink flies, and breathe flies.

Lizards, cockroaches, and snakes, get into the bed; ants eat up the books; scorpions sting you on the foot. Every thing bites, stings, or bruises; every second of your existence you are wounded by some piece of animal life that nobody has ever seen before, except Swammerdam and Meriam. An insect with eleven legs is swimming in your teacup, a nondescript with nine wings is struggling in the small beer, or a caterpillar with several dozen eyes in his belly is hastening over the bread and butter! All nature is alive, and seems to be gathering all her entomological hosts to eat you up, as you are standing, out of your coat, waistcoat, and breeches. Such are the tropics. All this reconciles us to our dews, fogs, vapours, and drizzle—to our apothecaries rushing about with gargles and tinctures—to our old, British, constitutional coughs, sore throats, and swelled faces.

We come now to the counterpart of St. George and the Dragon. Every one knows that the large snake of tropical climates throws himself upon his prey, twists the folds of his body round the victim, presses him to death, and then eats him. Mr. Waterton wanted a large snake for the sake of his skin; and it occurred to him, that the success of this sort of combat depended upon who began first, and that if he could contrive to fling himself upon the snake, he was just as likely to send the snake to the British Museum, as the snake, if allowed the advantage of prior occupation, was to eat him up. The opportunities which Yorkshire squires have of combating with the *boa strictor* are so few, that Mr. Waterton must be allowed to tell his own story in his own manner.

‘ We went slowly on in silence, without moving our arms or

heads, in order to prevent all alarm as much as possible, lest the snake should glide off, or attack us in self-defence. I carried the lance perpendicularly before me, with the point about a foot from the ground. The snake had not moved; and on getting up to him, I struck him with the lance on the near side, just behind the neck, and pinned him to the ground. That moment the negro next to me seized the lance and held it firm in its place, while I dashed head foremost into the den to grapple with the snake, and to get hold of his tail before he could do any mischief.

‘ On pinning him to the ground with the lance, he gave a tremendous loud hiss, and the little dog ran away, howling as he went. We had a sharp fray in the den, the rotten sticks flying on all sides, and each party struggling for superiority. I called out to the second negro to throw himself upon me, as I found I was not heavy enough. He did so, and the additional weight was of great service. I had now got firm hold of his tail; and after a violent struggle or two, he gave in, finding himself overpowered. This was the moment to secure him. So, while the first negro continued to hold the lance firm to the ground, and the other was helping me, I contrived to unloose my braces, and with them tied up the snake’s mouth.

‘ The snake, now finding himself in an unpleasant situation, tried to better himself, and set resolutely to work, but we overpowered him. We contrived to make him twist himself round the shaft of the lance, and then prepared to convey him out of the forest. I stood at his head, and held it firm under my arm, one negro supported the belly, and the other the tail. In this order we began to move slowly towards home, and reached it after resting ten times; for the snake was too heavy for us to support him without stopping to recruit our strength. As we proceeded onwards with him, he fought hard for freedom, but it was all in vain.’—(p. 202—204.)

One of these combats we should have thought sufficient for glory, and for the interests of the British Museum. But Hercules killed two snakes, and Mr. Waterton would not be content with less.

‘ There was a path where timber had formerly been dragged along. Here I observed a young coulacanara, ten feet long, slowly moving onwards; I saw he was not thick enough to break my arm, in case he got twisted round it. There was not a moment to be lost. I laid hold of his tail with the left hand, one knee being on the ground; with the right I took off my hat, and held it as you would hold a shield for defence.

‘ The snake instantly turned, and came on at me, with his head about a yard from the ground, as if to ask me, what business I had to take liberties with his tail. I let him come, hissing and open-mouthed, within two feet of my face, and then, with all the force I was master of, I drove my fist, shielded by my hat, full in his jaws. He was stunned and confounded by the blow, and ere he could recover himself, I had seized his throat with both hands, in such a position that he could not bite me; I then allowed him to coil himself round my body, and marched off with him as my lawful prize. He pressed me hard, but not alarmingly so.’—(p. 206, 207.)

When the body of the large snake began to smell, the vultures immediately arrived. The king of the vultures first gorged himself, and then retired to a large tree, while his subjects consumed the remainder. It does not appear that there was any favouritism. When the king was full, all the mob vultures ate alike; neither could Mr. Waterton perceive that there was any division into Catholic and Protestant vultures, or that the majority of the flock thought it essentially vulturish to exclude one third of their numbers from the blood and entrails. The vulture, it is remarkable, never eats live animals. He seems to abhor every thing which has not the relish of putrescence and flavour of death. The following is a characteristic specimen of the little inconveniences to which travellers are liable, who sleep on the feather beds of the forest. To see a rat in a room in Europe insures a night of horror. Every thing is by comparison.

‘ About midnight, as I was lying awake, and in great pain, I heard the Indian say, “ Massa, massa, you no hear tiger ? ” I listened attentively, and heard the softly sounding tread of his feet as he approached us. The moon had gone down ; but every now and then we could get a glance of him by the light of our fire : he was the jaguar, for I could see the spots on his body. Had I wished to have fired at him, I was not able to take a sure aim, for I was in such pain that I could not turn myself in my hammock. The Indian would have fired, but I would not allow him to do so, as I wanted to see a little more of our new visiter ; for it is not every day or night that the traveller is favoured with an undisturbed sight of the jaguar in his own forests.

‘ Whenever the fire got low, the jaguar came a little nearer, and when the Indian renewed it, he retired abruptly ; sometimes he would come within twenty yards, and then we had a view of him, sitting on his hind legs like a dog ; sometimes he moved slowly to and fro, and at other times we could hear him mend his pace, as if impatient. At last the Indian, not relishing the idea of having such company in the neighbourhood, could contain himself no longer, and set up a most tremendous yell. The jaguar bounded off like a race-horse, and returned no more ; it appeared by the print of his feet the next morning, that he was a full-grown jaguar.’—(p. 212, 213.)

We have seen Mr. Waterton fling himself upon a snake ; we shall now mount him upon a crocodile, undertaking that this shall be the last of his feats exhibited to the reader. He had baited for a cayman or crocodile, the hook was swallowed, and the object was to pull the animal up and to secure him. ‘ If you pull him up,’ say the Indians, ‘ as soon as he sees you on the brink of the river, he will run at you and destroy you.’ ‘ Never mind,’ says our traveller, ‘ pull away, and leave the rest to me.’ And accordingly he places himself upon the shore, with the mast of the canoe in his hand, ready to force it down the

throat of the crocodile as soon as he makes his appearance.

‘ By the time the cayman was within two yards of me, I saw he was in a state of fear and perturbation ; I instantly dropped the mast, sprung up, and jumped on his back, turning half round as I vaulted, so that I gained my seat with my face in a right position. I immediately seized his fore legs, and, by main force, twisted them on his back ; thus they served me for a bridle.

‘ He now seemed to have recovered from his surprise, and probably fancying himself in hostile company, he began to plunge furiously, and lashed the sand with his long and powerful tail. I was out of reach of the strokes of it, by being near his head. He continued to plunge and strike, and made my seat very uncomfortable. It must have been a fine sight for an unoccupied spectator.

‘ The people roared out in triumph, and were so vociferous, that it was some time before they heard me tell them to pull me and my beast of burden farther in land. I was apprehensive the rope might break, and then there would have been every chance of going down to the regions under water with the cayman. That would have been more perilous than Arion’s marine morning ride :—

“ Delphini insidens, vada cærulea sulcat Arion.”

‘ The people now dragged us above forty yards on the sand ; it was the first and last time I was ever on a cayman’s back. Should it be asked, how I managed to keep my seat, I would answer—I hunted some years with Lord Darlington’s fox hounds.’—(p. 231, 232.)

The Yorkshire gentlemen have long been famous for their equestrian skill ; but Mr. Waterton is the first among them of whom it could be said, that he has a fine hand upon a crocodile. This accursed animal, so ridden by Mr. Waterton, is the scourge and terror of all the large rivers in South America near the line. Their boldness is such, that a cayman

has sometimes come out of the Oroonoque, at Angustura, near the public walks where the people were assembled, seized a full-grown man, as big as Sir William Curtis after dinner, and hurried him into the bed of the river for his food. The governor of Angustura witnessed this circumstance himself.

Our Eboracic traveller had now been nearly eleven months in the desert, and not in vain. Shall we express our doubts, or shall we confidently state at once the immense wealth he had acquired? — a prodigious variety of insects, two hundred and thirty birds, ten land-tortoises, five armadillas, two large serpents, a sloth, an ant-bear, and a cayman. At Liverpool, the custom-house officers, men ignorant of Linnæus, got hold of his collection, detained it six weeks, and, in spite of remonstrances to the Treasury, he was forced to pay very high duties. This is really perfectly absurd; that a man of science cannot bring a pickled armadilla, for a collection of natural history, without paying a tax for it. This surely must have happened in the dark days of Nicolas. We cannot doubt but that such paltry exactions have been swept away by the manly and liberal policy of Robinson and Huskisson. That a great people should compel an individual to make them a payment before he can be permitted to land a stuffed snake upon their shores, is, of all the paltry custom-house robberies we ever heard of, the most mean and contemptible — but *Major rerum ordo nascitur*.

The *fourth* journey of Mr. Waterton is to the United States. It is pleasantly written; but our author does not appear as much at home among men as among beasts. Shooting, stuffing, and pursuing are his occupations. He is lost in places where there are no bushes, snakes, nor Indians — but he is full

of good and amiable feeling wherever he goes. We cannot avoid introducing the following passage :—

‘ The steam-boat from Quebec to Montreal had above five hundred Irish emigrants on board. They were going, “ they hardly knew whither,” far away from dear Ireland. It made one’s heart ache to see them all huddled together, without any expectation of ever revisiting their native soil. We feared that the sorrow of leaving home for ever, the miserable accommodations on board the ship which had brought them away, and the tossing of the angry ocean, in a long and dreary voyage, would have rendered them callous to good behaviour. But it was quite otherwise. They conducted themselves with great propriety. Every American on board seemed to feel for them. And then “ they were so full of wretchedness. Need and oppression stared within their eyes. Upon their backs hung ragged misery. The world was not their friend.” “ Poor dear Ireland,” exclaimed an aged female, as I was talking to her, “ I shall never see it any more ! ” — (p. 259, 260.)

And thus it is in every region of the earth ! There is no country where an Englishman can set his foot, that he does not meet these miserable victims of English cruelty and oppression—banished from their country by the stupidity, bigotry, and meanness of the English people, who trample on their liberty and conscience, because each man is afraid, in another reign, of being out of favour, and losing his share in the spoil.

We are always glad to see America praised (slavery excepted). And yet there is still, we fear, a party in this country, who are glad to pay their court to the timid and the feeble, by sneering at this great spectacle of human happiness. We never think of it without considering it as a great lesson to the people of England, to look into their own affairs, to watch and suspect their rulers, and not to be defrauded of

happiness and money by pompous names, and false pretences.

‘ Our western brother is in possession of a country replete with every thing that can contribute to the happiness and comfort of mankind. His code of laws, purified by experience and common sense, has fully answered the expectations of the public. By acting up to the true spirit of this code, he has reaped immense advantages from it. His advancement, as a nation, has been rapid beyond all calculation ; and, young as he is, it may be remarked, without any impropriety, that he is now actually reading a salutary lesson to the rest of the civilised world.’—(p. 273.)

Now, what shall we say, after all, of Mr. Waterton? That he has spent a great part of his life in wandering in the wild scenes he describes, and that he describes them with entertaining zeal, and real feeling. His stories draw largely sometimes on our faith ; but a man who lives in the woods of Cayenne must do many odd things, and see many odd things — things utterly unknown to the dwellers in Hackney and Highgate. We do not want to rein up Mr. Waterton too tightly — because we are convinced he goes best with his head free. But a little less of apostrophe, and some faint suspicion of his own powers of humour, would improve this gentleman’s style. As it is, he has a considerable talent at describing. He abounds with good feeling ; and has written a very entertaining book, which hurries the reader out of his European parlour, into the heart of tropical forests, and gives, over the rules and the cultivation of the civilised parts of the earth, a momentary superiority to the freedom of the savage, and the wild beauties of Nature. We honestly recommend the book to our readers : it is well worth the perusal.

MAN TRAPS AND SPRING GUNS.

(E. REVIEW, 1821.)

Reports of Cases argued and determined in the Court of King's Bench, in Hilary Term, 60th Geo. III. 1820. By Richard V. Barnewall, of Lincoln's Inn, Esq. Barrister-at-Law, and Edward H. Alderson, of the Inner Temple, Esq. Barrister-at-Law. Vol. III. Part II. London, 1820.

MOST of our readers will remember, that we very lately published an article upon the use of Steel Traps and Spring Guns; and, in the course of discussion, had occasion to animadvert upon the Report of Mr. Justice Best's judgment, in the case of *Ilott and Wilkes*, as reported in *Chetwynd's Edition of Burn's Justice*, published in the spring of the present year. In the *Morning Chronicle*, of the 4th of June, 1821, Mr. Justice Best is reported to have made the following observations in the King's Bench: —

‘ Mr. Justice Best said, Mr. Chetwynd's book having been mentioned by my Learned Brother Bayley, I must take this opportunity, not without some pain, of adverting to what I am reported, in his work, to have said in the case of *Ilott v. Wilkes*, and of correcting a most gross misrepresentation. I am reported to have concurred with the other Judges, and to have delivered my judgment at considerable length, and then to have said, “ This case has been discussed at the Bar, as if these engines were exclusively resorted to for the protection of game; but I consider them as lawfully applicable to the protection of every species of property against unlawful trespassers.” This is not what I stated; but the part which I

wish more particularly to deny, as ever having said, or even conceived, is this — “ But if even they might not lawfully be used for the protection of game, I, for one, should be extremely glad to adopt such means, if they were found sufficient for that purpose.” I confess I am surprised that this learned person should suppose, from the note of any one that any person who ever sat in a Court of Justice as a Judge could talk such wicked nonsense as I am made to talk ; and I am surprised that he should venture to give the authority he does for what he has published ; for I find, that the reference he gives in the Appendix to his book is 3 Barn. and Ald. 304., where there is a correct report of that case, and where it will be found that every word uttered by me is directly contrary to what I am supposed, by Mr. Chetwynd’s statement of the case, to have said. I don’t trouble the Court with reading the whole of what I did say on that occasion, but I will just say that I said — “ My Brother Bayley has illustrated this case by the question which he asked, namely, Can you indict a man for putting spring guns in his enclosed field ? I think the question put by Lord Chief Justice Gibbs, in the case of *Dean v. Clayton*, in the Common Pleas, a still better illustration, viz. Can you justify entering into enclosed lands to take away guns so set ? If both these questions must be answered in the negative, it cannot be unlawful to set spring guns in an enclosed field, at a distance from any road, giving such notice that they are set, as to render it in the highest degree probable that all persons in the neighbourhood must know that they are so set. Humanity requires that the fullest notice possible should be given ; and the law of England will not sanction what is inconsistent with humanity.” A popular work has quoted this Report from Mr. Chetwynd’s Work, but has omitted this important line, (which omission reminds one of the progress of a thing, the name of which one does not choose to mention,) “ that I had concurred in what had fallen from the other Judges ; ” and omitting that line, they state, that one had said, “ It is my opinion, that with notice, or without notice, this might be done.” Now, concurring with the other Judges, it is impossible I should say that. It is right that this should be corrected, not that I entertain

any angry feeling, for too much time has elapsed since then for any anger to remain on my mind; but all I claim, with respect to the observations made in that work, severe as they are, (and I, for one, feel that I should deserve no mercy if I should ever entertain such doctrines,) is, that I may not be misrepresented. It is not necessary for me, in this place, to say, that no man entertains more horror of the doctrine I am supposed to have laid down than I do, that the life of man is to be treated lightly and indifferently, in comparison with the preservation of game, and the amusement of sporting; that the laws of humanity are to be violated for the sake merely of preserving the amusement of game. I am sure no man can justly impute to me such wicked doctrines. It is unnecessary for me to say, that I entertain no such sentiments; and therefore I hope I shall be excused, not on account of my own feelings, but as far as the public are interested in the character of a Judge, in saying, that no person should blame a Judge for what has been unjustly put into his mouth.'

His Lordship's speech is reported in the New Times of the same date, as follows: —

' Mr. Justice Best said, " My Brother Bayley has quoted Mr. Chetwynd's edition of Burn: I am surprised that the learned author of that work should have made me talk such mischievous nonsense, as he has given to the public, in a report of my judgment, in the case of *Ilott and Wilkes*. I am still more surprised, that he should have suffered this judgment to remain uncorrected, after he had seen a true report of the case in *Barnewall and Alderson*, to which report he has referred in his Appendix." Mr. Chetwynd's report has the following passage: — " Mr Justice Best concurred with the other Judges." His Lorship concluded as follows: — " This case has been discussed at the Bar, as if these inquiries were exclusively resorted to for the protection of game; but I considered them as lawfully applicable to the protection of every species of property against unlawful trespassers. *But if even they might not lawfully be used for*

the protection of game, I for one should be extremely glad to adopt such measures, if they were found sufficient for that purpose."

' A popular periodical work contains the passage just cited, with the omission of the words " concurred with the other judges." Of this omission I have reason to complain, because, if it had been inserted, the writer of the article could not have said, " It follows, that a man may put his fellow-creatures to death for any infringement of his property, for picking the sloes and blackberries off his hedges ; for breaking a few dead sticks out of them by night or by day, *with resistance or without resistance, with warning or without warniny.*" The Judges with whom Mr. Chetwynd makes me concur in opinion, all gave their judgment on the ground of due notice being given. I do not complain of the other observations contained in this work ; they would have been deserved by me had I ever uttered such an opinion as the report of Mr. Chetwynd has stated me to have delivered. The whole of what I said will be found to be utterly inconsistent with the statement, by those who will read the case in " Barnewall and Alderson." I will only trouble the Court with the passage which will be found in the report of my judgment, in " 3 Barnewall and Alderson, 319. : " — " It cannot be unlawful to set spring guns in an enclosed field, at a distance from any road, giving such notice that they are set, as to render it in the highest degree probable that all persons in the neighbourhood must know that they are so set. Humanity required that the fullest notice possible should be given ; and the law of England will not sanction what is inconsistent with humanity." I have taken the first opportunity of saying this, because I think it of importance to the public that such a misrepresentation of the opinion of one of the Judges should not be circulated without some notice.'

We subjoin the report of Messrs. Barnewall and Alderson, here alluded to, and allowed by Mr. Justice Best to be correct.

' *Best J.* The act of the plaintiff could only occasion mere nominal damage to the wood of the defendant. The

injury that the plaintiff's trespass has brought upon himself is extremely severe. In such a case, one cannot, without pain, decide against the action. But we must not allow our feelings to induce us to lose sight of the principles which are essential to the rights of property. The prevention of intrusion upon property is one of these rights; and every proprietor is allowed to use the force that is *absolutely* necessary to vindicate it. If he uses more force than is *absolutely* necessary, he renders himself responsible for all the consequences of the excess. Thus, if a man comes on my land, I cannot lay hands on him to remove him, until I have desired him to go off. If he will not depart on request, I cannot proceed immediately to beat him, but must endeavour to push him off. If he is too powerful for me, I cannot use a dangerous weapon, but must first call in aid other assistance. I am speaking of out-door property, and of cases in which no felony is to be apprehended. It is evident, also, that this doctrine is only applicable to trespasses committed in the presence of the owner of the property trespassed on. When the owner and his servants are absent at the time of the trespass, it can only be repelled by the terror of spring guns, or other instruments of the same kind. There is, in such cases, no possibility of proportioning the resisting force to the obstinacy and violence of the trespasser, as the owner of the close may and is required to do where he is present. There is no distinction between the mode of defence of one species of out-door property and another (except in cases where the taking or breaking into the property amounts to felony). If the owner of woods cannot set spring guns in his woods, the owner of an orchard, or of a field with potatoes or turnips, or any other crop usually the object of plunder, cannot set them in such field. How then are these kinds of property to be protected, at a distance from the residence of the owner, in the night, and in the absence of his servants? It has been said, that the law has provided remedies for any injuries to such things by action. But the offender must be detected before he can be subjected to an action; and the expense of continual watching for this purpose would often exceed the value of the property to be protected. If we look at the

subject in this point of view, we may find, amongst poor tenants, who are prevented from paying their rents by the plunder of their crops, men who are more objects of our compassion than the wanton trespasser, who brings on himself the injury which he suffers. If an owner of a close cannot set spring guns, he cannot put glass bottles or spikes on the top of a wall, or even have a savage dog, to prevent persons from entering his yard. It has been said, in argument, that you may see the glass bottles or spikes; and it is admitted, that if the exact spot where these guns are set was pointed out to the trespasser, he could not maintain any action for the injury he received from one of them. As to seeing the glass bottles or spikes, that must depend on the circumstance whether it be light or dark at the time of the trespass. But what difference does it make, whether the trespasser be told the gun is set in such a spot, or that there are guns in different parts of such a field, if he has no right to go on any part of that field? It is absurd to say you may set the guns, provided you tell the trespasser exactly where they are set, because then the setting them could answer no purpose. My Brother *Bayley* has illustrated this case, by the question which he asked, namely, Can you indict a man for putting spring guns in his enclosed field? I think the question put by Lord C. J. *Gibbs*, in the case in the Common Pleas, a still better illustration, viz. Can you justify entering into enclosed lands, to take away guns so set? If both these questions must be answered in the negative, it cannot be unlawful to set spring guns in an enclosed field, at a distance from any road, giving such notice that they are set, as to render it in the highest degree probable that all persons in the neighbourhood must know that they are so set. Humanity requires that the fullest notice possible should be given; and the law of *England* will not sanction what is inconsistent with humanity. It has been said in argument, that it is a principle of law, that you cannot do indirectly what you are not permitted to do directly. This principle is not applicable to the case. You cannot shoot a man that comes on your land, because you may turn him off by means less hurtful to him; and, therefore, if you saw him walking in your field, and

were to invite him to proceed on his walk, knowing that he must tread on a wire, and so shoot himself with a spring gun, you would be liable to all the consequences that would follow. The invitation to him to pursue his walk is doing indirectly, what, by drawing the trigger of a gun with your own hand, is done directly. But the case is just the reverse, if, instead of inviting him to walk on your land, you tell him to keep off, and warn him of what will follow if he does not. It is also said, that it is a maxim of law, that you must so use your own property as not to injure another's. This maxim I admit ; but I deny its application to the case of a man who comes to trespass on my property. It applies only to cases where a man has only a transient property, such as in the air or water that passes over his land, and which he must not corrupt by nuisance ; or where a man has a qualified property, as in land near another's ancient windows, or in land over which another has a right of way. In the first case, he must do nothing on his land to stop the light of the windows, or, in the second, to obstruct the way. This case has been argued, as if it appeared in it that the guns were set to preserve game ; but that is not so : they were set to prevent trespasses on the lands of the defendant. Without, however, saying in whom the property of game is vested, I say, that a man has a right to keep persons off his lands, in order to preserve the game. Much money is expended in the protection of game ; and it would be hard, if, in one night, when the keepers are absent, a gang of poachers might destroy what has been kept at so much cost. If you do not allow men of landed estates to preserve their game, you will not prevail on them to reside in the country. Their poor neighbours will thus lose their protection and kind offices ; and the government the support that it derives from an independent, enlightened, and unpaid magistracy.'

As Mr. Justice Best denies that he did say what a very respectable and grave law publication reported him to have said, and as Mr. Chetwynd and his reporter have made no attempt to vindicate their Report, of course our observations cease to be ap-

plicable. There is certainly nothing in the Term Report of Mr. Justice Best's speech which calls for any degree of moral criticism ; — nothing but what a respectable and temperate Judge might fairly have uttered. Had such been the Report cited in Burn, it never would have drawn from us one syllable of reprehension.

We beg leave, however, to observe, that we have never said that it was Mr. Justice Best's opinion, as reported in Chetwynd, that a man might be put to death *without Notice*, but without *Warning* ; by which we meant a very different thing. If notice was given on boards, that certain grounds were guarded by watchmen with fire-arms, the watchmen, feeling perhaps some little respect for human life, would probably call out to the man to stand and deliver himself up : — 'Stop, or I'll shoot you !' 'Stand, or you are a dead man !' — or some such compunctious phrases as the law compels living machines to use. But the trap can give no such warning — can present to the intruder no alternative of death or surrender. Now these different modes of action in the dead or the living guard, is what we alluded to in the words *without warning*. We meant to characterise the ferocious, unrelenting nature of the means used — and the words are perfectly correct and applicable, after all the printed *notices* in the world. Notice is the communication of something about to happen, after some little interval of time. Warning is the communication of some imminent danger. Nobody gives another notice that he will immediately shoot him through the head — or warns him that he will be a dead man in less than thirty years. This, and not the disingenuous purpose ascribed to us by Mr. Justice Best, is the explanation

of the offending words. We were thoroughly aware that Mr. Justice Best was an advocate for notice, and never had the most distant intention of representing his opinion otherwise: and we really must say, that (if the Report had been correct) there never was a judicial speech where there was so little necessity for having recourse to the arts of misrepresentation. We are convinced, however, that the report is not correct — and we are heartily glad it is not. There is in the Morning Chronicle an improper and offensive phrase, which (now we know Mr. Justice Best's style better) we shall attribute to the reporters, and pass over without further notice. It would seem, from the complaint of the learned Judge, that we had omitted something in the middle of the quotation from Chetwynd; whereas we have quoted every word of the speech as Chetwynd has given it, and only began our quotation after the preliminary observations, because we had not the most distant idea of denying that Mr. Justice Best considered ample notice as necessary to the legality of these proceedings.

There are passages in the Morning Chronicle already quoted, and in the Term Report, which we must take the liberty of putting in juxtaposition to each other.

*Mr. Justice Best in
the Morning Chronicle of the 4th
of June, 1821.*

*Mr. Justice Best in the Term Reports,
Barnewall and Alderson.*

It is not necessary for me in this place to say, that no man entertains more horror of the doctrine

When the owner and his servants are absent at the time of the trespass, it can only be repelled by the terror of spring guns, or other instruments of the same kind. There is, in such cases,

I am supposed to have laid down, than I do, that the life of man is to be treated lightly and indifferently, in comparison with the preservation of game and the amusement of sporting—that the laws of humanity are to be violated for the sake merely of preserving the amusement of game. I am sure no man can justly impute to me such wicked doctrines; it is unnecessary for me to say I entertain no such sentiments.

In Barnewall and Alderson there is a correct report of that case.—*Morn. Chron.*

no possibility of proportioning the resisting force to the obstinacy and violence of the trespasser, as the owner of the close may, and is required to do, when he is present. — 317.

Without saying in whom the property of game is vested, I say that a man has a right to keep persons off his lands, in order to preserve the game. Much money is expended on the protection of game; and it would be hard if, in one night, when the *keepers are absent*, a gang of poachers might destroy what has been kept at so much cost. — 320.

If an owner of a close cannot set spring guns, he cannot put glass bottles or spikes on the top of a wall. — 318.

If both these questions must be answered in the negative, it cannot be unlawful to set spring guns in an enclosed field, at a distance from any road; giving such notice that they are set, as to render it in the highest degree probable that all persons in the neighbourhood must know they are so set. Humanity requires that the fullest notice possible should be given; and the law of England will not sanction what is inconsistent with humanity.

— *Barnewall and Alderson*, 319.

There is, perhaps, some little inconsistency in these opposite extracts; but we have not the smallest wish to insist upon it. We are thoroughly and honestly convinced, that Mr. Justice Best's horror at the destruction of human life for the mere preservation of game is quite sincere. It is impossible, indeed, that any human being, of common good nature, could

entertain a different feeling upon the subject, when it is earnestly pressed upon him ; and though, perhaps, there may be Judges upon the Bench more remarkable for imperturbable apathy, we never heard Mr. Justice Best accused of ill nature. In condescending to notice our observations, in destroying the credit of Chetwynd's Report, and in withdrawing the canopy of his name from the bad passions of county gentlemen, he has conferred a real favour upon the public.

Mr. Justice Best, however, must excuse us for saying, that we are not in the slightest degree convinced by his reasoning. We shall suppose a fifth Judge to have delivered his opinion in the case of *Ilott against Wilkes*, and to have expressed himself in the following manner. But we must caution Mr. Chetwynd against introducing this fifth Judge in his next edition of Burn's Justice ; and we assure him that he is only an imaginary personage.

‘ My Brother Best justly observes, that prevention of intrusion upon private property is a right which every proprietor may act upon, and use force to vindicate — the force absolutely necessary for such vindication. If any man intrude upon another's lands, the proprietor must first desire him to go off, then lay hands upon the intruder, then push him off ; and if that will not do, call in aid other assistance, before he uses a dangerous weapon. If the proprietor uses more force than is absolutely necessary, he renders himself responsible for all the consequences of the excess. In this doctrine I cordially concur ; and admire (I am sure, with him) the sacred regard which our law every where exhibits for the life and safety of man — its tardiness and reluctance to proceed to extreme violence : but my learned brother then observes as follows : — “ It is evident, also, that this

doctrine is only applicable to trespasses committed in the presence of the owner of the property trespassed upon. When the owner and his servants are absent at the time of the trespass, it can only be repelled by the terror of spring guns, or other instruments of the same kind." If Mr. Justice Best means, by the *terror of spring guns*, the mere alarm that the notice excites — or the powder without the bullets — noise without danger — it is not worth while to raise an argument upon the point; for, absent or present, notice or no notice, such means must always be lawful. But if my Brother Best means that, in the absence of the proprietor, the intruder may be killed by such instruments, after notice, this is a doctrine to which I never can assent; because it rests the life and security of the trespasser upon the accident of the proprietor's presence. In that presence there must be a most cautious and nicely graduated scale of admonition and harmless compulsion; the feelings and safety of the intruder are to be studiously consulted; but if business or pleasure call the proprietor away, the intruder may be instantly shot dead by machinery. Such a state of law, I must be permitted to say, is too incongruous for this or any other country.

‘ If the alternative is the presence of the owner and his servants or such dreadful consequences as these, why are the owner or his servants allowed to be absent? If the ultimate object in preventing such intrusions is pleasure in sporting, it is better that pleasure should be rendered more expensive, than that the life of man should be rendered so precarious. But why is it impossible to proportion the resisting force to the obstinacy of the trespasser in the absence of the proprietor? Why may not an intruder be let gently down into five feet of liquid

mud? — why not caught in a box which shall detain him till the next morning? — why not held in a toothless trap till the proprietor arrives? — such traps as are sold in all the iron shops in this city? We are bound, according to my Brother Best, to inquire if these means have been previously resorted to; for, upon his own principle, greater violence must not be used, where less will suffice for the removal of the intruder.

‘ There are crops, I admit, of essential importance to agriculture, which will not bear the expense of eternal vigilance; and if there are districts where such crops are exposed to such serious and disheartening depredation, that may be a good reason for additional severity; but then it must be the severity of the Legislator, and not of the proprietor. If the Legislature enacts fine and imprisonment as the punishment for stealing turnips, it is not to be endured that the proprietor should award to this crime the punishment of death. If the fault is not sufficiently prevented by the punishments already in existence, he must wait till the frequency and flagrancy of the offence attracts the notice, and stimulates the penalties of those who make laws. He must not make laws (and those very bloody laws) for himself.

‘ I do not say that the setter of the trap or gun allures the trespasser into it; but I say that the punishment he intends for the man who trespasses after notice, is death. He covers his spring gun with furze and heath, and gives it the most natural appearance he can; and in that gun he places the slugs by which he means *to kill* the trespasser. This killing of an unchallenged, unresisting person, I really cannot help considering to be as much murder

as if the proprietor had shot the trespasser with his gun. Giving it all the attention in my power, I am utterly at a loss to distinguish between the two cases. Does it signify whose hand or whose foot pulls the string which moves the trigger? — the real murderer is he who prepares the instrument of death, and places it in a position that such hand or foot may touch it, for the purposes of destruction. My Brother Holroyd says, the trespasser who has had a notice of guns being set in the wood is the real voluntary agent who pulls the trigger. But I most certainly think that he is not. He is the animal agent, but not the rational agent — he does not intend to put himself to death; but he foolishly trusts in his chance of escaping, and is any thing but a voluntary agent in firing the gun. If a trespasser were to rush into a wood, meaning to seek his own destruction — to hunt for the wire, and when found, to pull it, he would indeed be the agent, in the most philosophical sense of the word. But, after entering the wood, he does all he can to avoid the gun — keeps clear of every suspicious place, and is baffled only by the superior cunning of him who planted the gun. How the firing of the gun then can be called his act — his voluntary act — I am at a loss to conceive. The practice has unfortunately become so common, that the first person convicted of such a murder, and acting under the delusion of right, might be a fit object for the Royal mercy. Still, in my opinion, such an act must legally be considered as murder.

It has been asked, if it be an indictable offence to set such guns in a man's own ground: but let me first put a much greater question — Is it murder to kill any man with such instruments? If it is, it must be indictable to set them. To place an instrument

for the purpose of committing murder, and to surrender (as in such cases you must surrender) all control over its operation, is clearly an indictable offence.

‘ All my brother Judges have delivered their opinions as if these guns were often set for the purposes of terror, and not of destruction. To this I can only say, that the moment any man puts a bullet into his spring gun, he has some other purpose than that of terror ; and if he does not put a bullet there, he never can be the subject of argument in this Court.

‘ My Lord Chief Justice can see no distinction between the case of tenter-hooks upon a wall, and the placing of spring guns, as far as the lawfulness of both is concerned. But the distinctions I take between the case of tenter-hooks upon a wall, and the setting of spring guns, are founded — 1st, in the magnitude of the evil inflicted ; 2dly, in the great difference of the notice which the trespasser receives ; 3dly, in the very different evidence of criminal intention in the trespasser ; 4thly, in the greater value of the property invaded ; 5thly, in the greater antiquity of the abuse. To cut the fingers, or to tear the hand, is of course a more pardonable injury than to kill. The trespasser, in the daytime, sees the spikes ; and by day or night, at all events, he sees or feels the wall. It is impossible he should not understand the nature of such a prohibition, or imagine that his path lies over this wall ; whereas the victim of the spring gun may have gone astray, may not be able to read, or may first cross the armed soil in the night-time, when he cannot read ; — and so he is absolutely without any notice at all. In the next place, the slaughtered man may be perfectly innocent in his purpose, which the scaler of the walls cannot be. No man can get to

the top of a garden wall without a criminal purpose. A garden, by the common consent and feeling of mankind, contains more precious materials than a wood, or a field, and may seem to justify a greater jealousy and care. Lastly, and for these reasons perhaps, the practice of putting spikes and glass bottles has prevailed for this century past; and the right so to do has become, from time, and the absence of cases, (for the plaintiff, in such a case, must acknowledge himself a thief,) inveterate. But it is quite impossible, because in some trifling instances, and in much more pardonable circumstances, private vengeance has usurped upon the province of law, that I can, from such slight abuses, confer upon private vengeance the power of life and death. On the contrary, I think it my imperious duty to contend, that punishment for such offences as these is to be measured by the law, and not by the exaggerated notions which any individual may form of the importance of his own pleasures. It is my duty, instead of making one abuse a reason for another, to recall the law back to its perfect state, and to restrain as much as possible the invention and use of private punishments. Indeed, if this wild sort of justice is to be tolerated, I see no sort of use in the careful adaptation of punishments to crimes, in the humane labours of the law-giver. Every lord of a manor is his own Lycurgus, or rather his own Draco, and the great purpose of civil life is defeated. *Inter nova tormentorum genera machinasque exitiales, silent leges.*

‘Whatever be the law, the question of humanity is a separate question. I shall not state all I think of that person, who, for the preservation of game, would doom the innocent—or the guilty intruder, to a sudden death. I will not, however (because I am silent

respecting individuals), join in any undeserved panegyric of the humanity of the English law. I cannot say, at the same moment, that the law of England allows such machines to be set after public notice; and that the law of England sanctions nothing but what is humane. If the law sanctions such practices, it sanctions, in my opinion, what is to the last degree odious, unchristian, and inhumane.

‘ The case of the dog or bull I admit to be an analogous case to this : and I say, if a man were to keep a dog of great ferocity and power, for the express purpose of guarding against trespass in woods or fields, and that dog was *to kill* a trespasser, it would be murder in the person placing him there for such a purpose. It is indifferent to me whether the trespasser is slain by animals or machines, intentionally brought there for that purpose : he ought not to be *slain* at all. It is murder to use such a punishment for such an offence. If a man puts a ferocious dog in his *yard*, to guard his *house* from burglary, and that dog strays into the neighbouring field and there worries the man, there wants, in this case, the murderous and malicious spirit. The dog was placed in the yard for the legal purpose of guarding the house against burglary ; for which crime, if caught in the act of perpetrating it, a man may legally be put to death. There was no primary intention here of putting *a mere trespasser* to death. So, if a man keep a ferocious bull, not for agricultural purposes, but for the *express purpose* of repelling trespassers, and that bull occasion the death of a trespasser, it is murder : the *intentional infliction of death by any means for such sort of offences constitutes the murder* : a right to kill for such reasons cannot be acquired by the foolhardiness of the trespasser, nor by any

sort of notice or publicity. If a man were to blow a trumpet all over the country, and say that he would shoot any man who asked him how he did, would he acquire a right to do so by such notice? Does mere publication of an unlawful intention make the action lawful which follows? If notice is the principle which consecrates this mode of destroying human beings, I wish my brothers had been a little more clear, or a little more unanimous, as to what is meant by this notice. Must the notice be always actual, or is it sufficient that it is probable? May these guns act only against those who *have* read the notice, or against all who *might* have read the notice? The truth is, that the practice is so enormous, and the opinions of the most learned men so various, that a declaratory law upon the subject is imperiously required. Common humanity required it, after the extraordinary difference of opinion which occurred in the case of Dean and Clayton.

‘For these reasons, I am compelled to differ from my learned brothers. We have all, I am sure, the common object of doing justice in such cases as these; we can have no possible motive for doing otherwise. Where such a superiority of talents and numbers is against me, I must of course be wrong; but I think it better to publish my own errors, than to subscribe to opinions of the justice of which I am not convinced. To destroy a trespasser with such machines, I think would be murder; to set such uncontrollable machines for the purpose of committing this murder, I think would be indictable; and I am therefore of opinion, that he who suffers from such machines has a fair ground of action, in spite of any notice; for it is not in the power of notice to make them lawful.’

HAMILTON'S METHOD OF TEACHING LANGUAGES.—(E. REVIEW, 1826.)

1. *The Gospel of St. John, in Latin, adapted to the Hamiltonian System, by an Analytical and Interlineary Translation.* Executed under the immediate Direction of James Hamilton. London, 1824.
2. *The Gospel of St. John, adapted to the Hamiltonian System, by an Analytical and Interlineary Translation from the Italian, with full Instructions for its Use, even by those who are wholly ignorant of the Language. For the Use of Schools.* By James Hamilton, Author of the Hamiltonian System. London, 1825.

WE have nothing whatever to do with Mr. Hamilton personally. He may be the wisest or the weakest of men; most dexterous or most unsuccessful in the exhibition of his system; modest and proper, or prurient and preposterous in its commendation;—by none of these considerations is his system itself affected.

The proprietor of Ching's Lozenges must necessarily have recourse to a newspaper, to rescue from oblivion the merit of his vermifuge medicines. In the same manner, the Amboyna tooth-powder must depend upon the Herald and the Morning Post. Unfortunately, the system of Mr. Hamilton has been introduced to the world by the same means, and has exposed itself to those suspicions which hover over splendid discoveries of genius, detailed in the daily papers, and sold in sealed boxes at an infinite diversity of prices—but with a perpetual inclusion of the stamp, and with an equitable discount for undelayed payment.

It may have been necessary for Mr. Hamilton to have had recourse to these means of making known his discoveries, since he may not have had friends whose names and authority might have attracted the notice of the public ; but it is a misfortune to which his system has been subjected, and a difficulty which it has still to overcome. There is also a singular and somewhat ludicrous condition of giving *warranted lessons* ; by which is meant, we presume, that the money is to be returned, if the progress is not made. We should be curious to know, how poor Mr. Hamilton would protect himself from some swindling scholar, who, having really learnt all that the master professed to teach, should counterfeit the grossest ignorance of the Gospel of St. John, and refuse to construe a single verse, or to pay a farthing?

Whether Mr. Hamilton's translations are good or bad, is not the question. The point to determine is, whether very close interlineal translations are helps in learning a language ? not whether Mr. Hamilton has executed these translations faithfully and judiciously. Whether Mr. Hamilton is or is not the inventor of the system which bears his name, and what his claims to originality may be, are also questions of very second-rate importance ; but they merit a few observations. That man is not the discoverer of any art who first says the thing ; but he who says it so long, and so loud, and so clearly, that he compels mankind to hear him — the man who is so deeply impressed with the importance of the discovery that he will take no denial, but, at the risk of fortune and fame, pushes through all opposition, and is determined that what he thinks he has discovered shall not perish for want of a fair trial. Other persons had noticed the effect of coal-gas in producing light ; but

Winsor worried the town with bad English for three winters before he could attract any serious attention to his views. Many persons broke stone before Macadam, but Macadam felt the discovery more strongly, stated it more clearly, persevered in it with greater tenacity, wielded his hammer, in short, with greater force than other men, and finally succeeded in bringing his plan into general use.

Literal translations are not only not used in our public schools, but are generally discountenanced in them. A literal translation, or any translation of a school-book, is a contraband article in English schools, which a schoolmaster would instantly seize, as a custom-house officer would a barrel of gin. Mr. Hamilton, on the other hand, maintains, by books and lectures, that all boys ought to be allowed to work with literal translations, and that it is by far the best method of learning a language. If Mr. Hamilton's system is just, it is sad trifling to deny his claim to originality, by stating that Mr. Locke has said the same thing, or that others have said the same thing, a century earlier than Hamilton. They have all said it so feebly, that their observations have passed *sub silentio* ; and if Mr. Hamilton succeeds in being heard and followed, to him be the glory — because from him have proceeded the utility and the advantage.

The works upon this subject on this plan, published before the time of Mr. Hamilton, are Montanus's edition of the Bible, with Pignini's interlineary Latin version ; Lubin's New Testament having the Greek interlined with Latin and German ; Abbé L'Olivet's *Pensées de Cicéron* ; and a French work by the Abbé Radonvilliers, Paris, 1768 — and Locke upon Education.

One of the first principles of Mr. Hamilton is, to

introduce very strict literal, interlinear translations, as aids to lexicons and dictionaries, and to make so much use of them as that the dictionary or lexicon will be for a long time little required. We will suppose the language to be the Italian, and the book selected to be the Gospel of St. John. Of this Gospel Mr. Hamilton has published a key, of which the following is an extract : —

‘ 1 Nel principio era il Verbo, e il Verbo era appresso Dio, e il Verbo era Dio.
In the beginning was the Word, and the Word was near to God, and the Word was God.

‘ 2 Questo era nel principio appresso Dio.
This was in the beginning near to God.

‘ 3 Per mezzo di lui tutte le cose furon fatte: e senza di lui nulla fu fatto di ciò, che è stato fatto.
By means of him all the things were made: and without of him nothing was made of that, which is been made.

‘ 4 In lui era la vita, e la vita era la luce degli uomini
In him was the life, and the life was the light of the men:

‘ 5 E la luce splende tra la tenebre, e le tenebre hanno non ammessa la.
And the light shines among the darknesses, and the darknesses have not admitted her.

‘ 6 Vi fu un uomo mandato da Dio che nomava si Giovanni.
There was a man sent by God who did name himself John.

‘ 7 Questi venne qual testimone, affin di rendere testimonianza alla luce, onde per mezzo di lui tutti credessero.
This came like as witness, in order of to render testimony to the light, whence by mean of him all might believe.

In this way Mr. Hamilton contends (and appears to us to contend justly), that the language may be

acquired with much greater ease and despatch, than by the ancient method of beginning with grammar, and proceeding with the dictionary. We will presume at present, that the only object is to read, not to write, or speak Italian, and that the pupil instructs himself from the Key without a master, and is not taught in a class. We wish to compare the plan of finding the English word in such a literal translation, to that of finding it in dictionaries — and the method of ending with grammar, or of taking the grammar at an advanced period of knowledge in the language, rather than at the beginning. Every one will admit, that of all the disgusting labours of life, the labour of lexicon and dictionary is the most intolerable. Nor is there a greater object of compassion than a fine boy, full of animal spirits, set down in a bright sunny day, with an heap of unknown words before him, to be turned into English, before supper, by the help of a ponderous dictionary alone. The object in looking into a dictionary can only be, to exchange an unknown sound for one that is known. Now, it seems indisputable, that the sooner this exchange is made the better. The greater the number of such exchanges which can be made in a given time, the greater is the progress, the more abundant the *copia verborum* obtained by the scholar. Would it not be of advantage if the dictionary at once opened at the required page, and if a self-moving index at once pointed to the requisite word? Is any advantage gained to the world by the time employed first in finding the letter P, and then in finding the three guiding letters P R I? This appears to us to be pure loss of time, justifiable only if it is inevitable; and even after this is done, what an infinite multitude of difficulties are heaped at once upon the wretched beginner! Instead of being

reserved for his greater skill and maturity in the language, he must employ himself in discovering in which of many senses which his dictionary presents the word is to be used ; in considering the case of the substantive, and the syntactical arrangement in which it is to be placed, and the relation it bears to other words. The loss of time in the merely mechanical part of the old plan is immense. We doubt very much, if an average boy, between ten and fourteen, will look out or find more than sixty words in an hour ; we say nothing at present of the time employed in thinking of the meaning of each word when he has found it, but of the mere naked discovery of the word in the lexicon or dictionary. It must be remembered, we say an *average* boy — not what Master Evans, the show boy, can do, nor what Master Macarthy, the boy who is whipt every day, can do, but some boy between Macarthy and Evans ; and not what this medium boy can do, while his mastigophorous superior is frowning over him ; but what he actually does, when left in the midst of noisy boys, and with a recollection, that, by sending to the neighbouring shop, he can obtain any quantity of unripe gooseberries upon credit. Now, if this statement be true, and if there are 10,000 words in the Gospel of St. John, here are 160 hours employed in the mere digital process of turning over leaves ! But, in much less time than this, any boy of average quickness might learn, by the Hamiltonian method, to construe the whole four Gospels, with the greatest accuracy, and the most scrupulous correctness. The interlineal translation of course spares the trouble and time of this mechanical labour. Immediately under the Italian word is placed the English word. The unknown sound therefore is *instantly* exchanged for one that is known.

The labour here spared is of the most irksome nature; and it is spared at a time of life the most averse to such labour; and so painful is this labour to many boys, that it forms an insuperable obstacle to their progress. They prefer to be flogged, or to be sent to sea. It is useless to say of any medicine that it is valuable, if it is so nauseous that the patient flings it away. You must give me, not the best medicine you have in your shop, but the best you can get me to take.

We have hitherto been occupied with finding the word; we will now suppose, after running a dirty finger down many columns, and after many sighs and groans, that the word is found. We presume the little fellow working in the true orthodox manner, without any translation; he is in pursuit of the Greek word *Βαλλω*, and, after a long chase, seizes it, as greedily as a bailiff possesses himself of a fugacious captain. But, alas! the vanity of human wishes! — the never sufficiently to be pitied stripling has scarcely congratulated himself upon his success, when he finds *Βαλλω* to contain the following meanings in Herderick's Lexicon: — 1. Jacio; 2. Jaculor; 3. Ferio; 4. Figo; 5. Saucio; 6. Attingo; 7. Projicio; 8. Emitto; 9. Profundo; 10. Pono; 11. Immitto; 12. Trado; 13. Committo; 14. Condo; 15. Ædifico; 16. Verso; 17. Flecto. Suppose the little rogue, not quite at home in the Latin tongue, to be desirous of affixing English significations to these various words, he has then, at the moderate rate of six meanings to every Latin word, one hundred and two meanings to the word *Βαλλω*; or, if he is content with the Latin, he has then only seventeen.*

Words, in their origin, have a natural or primary

* In addition to the other needless difficulties and miseries entailed upon children who are learning languages, their Greek Lexi-

sense. The accidental associations of the people who use it, afterwards give to that word a great number of secondary meanings. In some words the primary meaning is very common, and the secondary meaning very rare. In other instances it is just the reverse; and in very many the particular secondary meaning is pointed out by some preposition which accompanies it, or some case by which it is accompanied. But an accurate translation points these things out gradually as it proceeds. The common and most probable meanings of the word *Βαλλω*, or of any other word, are, in the Hamiltonian method, insensibly but surely fixed on the mind, which, by the lexicon method, must be done by a tentative process, frequently ending in gross error, noticed with peevishness, punished with severity, consuming a great deal of time, and for the most part only corrected, after all, by the accurate *viva voce* translation of the master — or, in other words, by the Hamiltonian method.

The recurrence to a translation is treated, in our schools, as a species of imbecility and meanness; just as if there was any other dignity here than utility, any other object in learning languages, than to turn something you do not understand, into something you do understand, and as if that was not the best method which effected this object in the shortest

cons give a Latin, instead of an English translation; and a boy of twelve or thirteen years of age, whose attainments in Latin are of course but moderate, is expected to make it the vehicle of knowledge for other languages. This is setting the short-sighted and blear-eyed to lead the blind; and is one of those afflicting pieces of absurdity which escape animadversion, because they are, and have long been, of daily occurrence. Mr. Jones has published an English and Greek Lexicon, which we recommend to the notice of all persons engaged in education, and not sacramented against all improvement.

and simplest manner. Hear upon this point the judicious Locke:—‘ But if such a man cannot be got, who speaks good Latin, and being able to instruct your son in all these parts of knowledge, will undertake it by this method ; the next best is to have him taught as near this way as may be — which is by taking some easy and pleasant book, such as *Æsop’s Fables*, and writing the English translation (made as literal as it can be) in one line, and the Latin words which answer each of them just over it in another. These let him read every day over and over again, till he perfectly understands the Latin ; and then go on to another fable, till he be also perfect in that, not omitting what he is already perfect in, but sometimes reviewing that, to keep it in his memory ; and when he comes to write, let these be set him for copies, which, with the exercise of his hand, will also advance him in Latin. This being a more imperfect way than by talking Latin unto him, the formation of the verbs first, and afterwards the declensions of the nouns and pronouns perfectly learned by heart, may facilitate his acquaintance with the genius and manner of the Latin tongue, which varies the signification of verbs and nouns, not as the modern languages do, by particles prefixed, but by changing the last syllables. More than this of grammar I think he need not have till he can read himself “ *Sanctii Minerva* ” — with *Scioppius* and *Perigonius’s* notes.’ — *Locke on Education*, p. 74. folio.

Another recommendation which we have not mentioned in the Hamiltonian system is, that it can be combined, and is constantly combined, with the system of Lancaster. The Key is probably sufficient for those who have no access to classes and schools : but in an Hamiltonian school during the lesson, it is

not left to the option of the child to trust to the Key alone. The master stands in the middle, translates accurately and literally the whole verse, and then asks the boys the English of separate words, or challenges them to join the words together, as he has done. A perpetual attention and activity is thus kept up. The master, or a scholar (turned into a temporary Lancasterian master) acts as a living lexicon; and, if the thing is well done, as a lively and animating lexicon. How is it possible to compare this with the solitary wretchedness of a poor lad of the desk and lexicon, suffocated with the nonsense of grammarians, overwhelmed with every species of difficulty disproportionate to his age, and driven by despair to peg top, or marbles?

‘ Taking these principles as a basis, the teacher forms his class of *eight, ten, twenty, or one hundred*. The number is of little moment, it being as easy to teach a greater as a smaller one, and brings them at once to the language itself, by reciting, with a loud articulate voice, the first verse thus: — *In in, principio in beginning, Verbum Word, erat was, et and, Verbum Word, erat was, apud at, Deum God, et and, Verbum Word, erat was, Deus God*. Having recited the verse once or twice himself, it is then recited *precisely* in the same manner by any person of the class whom he may judge most capable; the person copying his manner and intonations as much as possible. — When the verse has been thus recited, by *six or eight* persons of the class, the teacher recites the 2d verse in the same manner, which is recited as the former by any members of the class; and thus continues until he has recited from *ten to twelve* verses, which usually constitute the first lesson of one hour. — In three lessons, the first Chapter may be thus readily translated, the teacher gradually diminishing the number of repetitions of the same verse till the *fourth* lesson, when each member of the class translates his verse in turn from the mouth of the teacher; from which period *fifty, sixty, or even seventy*, verses may be translated

in the time of a lesson, or one hour. At the *seventh* lesson, it is invariably found that the class can translate without the assistance of the teacher farther than for occasional correction, and for those words which they may not have met in the preceding chapters. But, to accomplish this, it is absolutely necessary that every member of the class know *every word* of all the preceding lessons; which is however an easy task, the words being always taught him in class, and the pupil besides being able to refer to the key whenever he is at a loss—the key being translated in the very words which the teacher has used in the class, from which, as was before remarked, he must never deviate. — In *ten* lessons, it will be found that the class can readily translate the whole of the Gospel of St. John, which is called the first section of the course. — Should any delay, from any cause, prevent them, it is in my classes always for account of teacher, who gives the extra lesson or lessons always *gratis*. — It cannot be too deeply impressed on the mind of the pupil, that *a perfect knowledge of every word* of his first section is most important to the ease and comfort of his future progress. — At the end of *ten* lessons, or first section, the custom of my Establishments is to give the pupil the *Epitome Historiæ Sacræ*, which is provided with a key in the same manner. — It was first used in our classes for the first and second sections; we now teach it in one section of *ten* lessons, which we find easier than to teach it in two sections before the pupil has read the Testament. — When he has read the Epitome, it will be then time to give him the theory of the verbs and other words which change their terminations. — He has already acquired a good practical knowledge of these things; the theory becomes then very easy. — A grammar containing the declensions and conjugations, and printed specially for my classes, is then put into the pupil's hands, (not to be got by heart, nothing is ever got by rote on this system,) but that he may comprehend more readily his teacher who lectures on grammar generally, but especially on the verbs. From this time, that is, from the beginning of the *third* section, the pupil studies the theory and construction of the language as well as its practice. For this purpose he reads the ancient authors, beginning with

Cæsar, which, together with the *Selecta e Profanis*, fills usefully the *third* and *fourth* sections. When these with the preceding books are well known, the pupil will find little difficulty in reading the authors usually read in schools. The *fifth* and *sixth* sections consist of Virgil and Horace, enough of which is read to enable the pupil to read them with facility, and to give him correct ideas of Prosody and Versification. Five or six months, with mutual attention on the part of pupil and teacher, will be found sufficient to acquire a knowledge of this language, which hitherto has *rarely* been the result of as many years.'

We have before said, that the Hamiltonian system must not depend upon Mr. Hamilton's method of carrying it into execution ; for instance, he banishes from his schools the effects of emulation. The boys do not take each other's places. This, we think, is a sad absurdity. A cook might as well resolve to make bread without fermentation, as a pedagogue to carry on a school without emulation. It must be a sad doughy lump without this vivifying principle. Why are boys to be shut out from a class of feelings to which society owes so much, and upon which their conduct in future life must (if they are worth any thing) be so closely constructed. Poet A writes verses to outshine poet B. Philosopher C sets up roasting Titanium, and boiling Chromium, that he may be thought more of than philosopher D. Mr. Jackson strives to outpaint Sir Thomas ; Sir Thomas Lethbridge to overspeak Mr. Canning ; and so society gains good chemists, poets, painters, speakers, and orators ; and why are not boys to be emulous as well as men ?

If a boy were in Paris, would he learn the language better by shutting himself up to read French books with a dictionary, or by conversing freely with all whom he met ? and what is conversation but an Ha-

miltonian school? Every man you meet is a living lexicon and grammar — who is perpetually changing your English into French, and perpetually instructing you, in spite of yourself, in the terminations of French substantives and verbs. The analogy is still closer, if you converse with persons of whom you can ask questions, and who will be at the trouble of correcting you. What madness would it be to run away from these pleasing facilities, as too dangerously easy — to stop your ears, to double-lock the door, and to look out *chickens*; *taking a walk*; and *fine weather*, in Boyer's Dictionary — and then, by the help of Chambaud's Grammar, to construct a sentence which should signify, '*Come to my house, and eat some chickens, if it is fine?*' But there is in England almost a love of difficulty and needless labour. We are so resolute and industrious in raising up impediments which ought to be overcome, that there is a sort of suspicion against the removal of these impediments, and a notion that the advantage is not fairly come by without the previous toil. If the English were in a paradise of spontaneous productions, they would continue to dig and plough, though they were never a peach nor a pine-apple the better for it.

A principal point to attend to in the Hamiltonian system, is the prodigious number of words and phrases which pass through the boy's mind, compared with those which are presented to him by the old plan. As a talkative boy learns French sooner in France than a silent boy, so a translator of books learns sooner to construe, the more he translates. An Hamiltonian makes, in six or seven lessons, three or four hundred times as many exchanges of English for French or Latin, as a grammar schoolboy can do; and if he loses 50 per cent. of all he hears, his

progress is still, beyond all possibility of comparison, more rapid.

As for pronunciation of living languages, we see no reason why that consideration should be introduced in this place. We are decidedly of opinion, that all living languages are best learnt in the country where they are spoken, or by living with those who come from that country ; but if that cannot be, Mr. Hamilton's method is better than the grammar and dictionary method. *Cæteris paribus*, Mr. Hamilton's method, as far as French is concerned, would be better in the hand of a Frenchman, and his Italian method in the hands of an Italian ; but all this has nothing to do with the system.

“ Have I read through Lilly ? — have I learnt by heart that most atrocious monument of absurdity, the Westminster Grammar ? — have I been whipt for the substantives ? — whipt for the verbs ? — and whipt for and with the interjections ? — Have I picked the sense slowly, and word by word, out of Hederick ? — and shall my son Daniel be exempt from all this misery ? — Shall a little unknown person in Cecil Street, Strand, No. 25., pretend to tell me that all this is unnecessary ? — Was it possible that I might have been spared all this ? — The whole system is nonsense, and the man an impostor. If there had been any truth in it, it must have occurred to some one else before this period.” — This is a very common style of observation upon Mr. Hamilton's system, and by no means an uncommon wish of the mouldering and decaying part of mankind, that the next generation should not enjoy any advantages from which they themselves have been precluded. — “ *Ay, ay, it's all mighty well — but I went through this myself, and I am determined my children shall do the same.*” —

We are convinced that a great deal of opposition to improvement proceeds from this principle. Crabbe might make a good picture of an unbenevolent old man, slowly retiring from this sublunary scene, and lamenting that the coming race of men would be less bumped on the roads, better lighted in the streets, and less tormented with grammars and lexicons, than in the preceding age. A great deal of compliment to the wisdom of ancestors, and a great degree of alarm at the dreadful spirit of innovation, are soluble into mere jealousy and envy.

But what is to become of a boy who has no difficulties to grapple with? How enervated will that understanding be, to which every thing is made so clear, plain, and easy; — no hills to walk up, no chasms to step over; every thing graduated, soft, and smooth. All this, however, is an objection to the multiplication table, to Napier's bones, and to every invention for the abridgement of human labour. There is no dread of any lack of difficulties. Abridge intellectual labour by any process you please — multiply mechanical powers to any extent — there will be sufficient, and infinitely more than sufficient, of laborious occupation for the mind and body of man. Why is the boy to be idle? — By and by comes the book without a key; by and by comes the lexicon. They do come at last — though at a better period. But if they did not come — if they were useless, if language could be attained without them — would any human being wish to retain difficulties for their own sake, which led to nothing useful, and by the annihilation of which our faculties were left to be exercised, by difficulties which *do* lead to something useful — by mathematics, natural philosophy, and every branch of useful knowledge? Can any one be so

anxious as to suppose, that the faculties of young men cannot be exercised, and their industry and activity called into proper action, because Mr. Hamilton teaches, in three or four years, what has (in a more vicious system) demanded seven or eight? Besides, even in the Hamiltonian method it is very easy for one boy to outstrip another. Why may not a clever and ambitious boy employ three hours upon his key by himself, while another boy has only employed one? There is plenty of corn to thrash, and of chaff to be winnowed away, in Mr. Hamilton's system; the difference is, that every blow tells, because it is properly directed. In the old way, half their force was lost in air. There is a mighty foolish apophthegm of Dr. Bell's, that it is not what is done for a boy that is of importance, but what a boy does for himself. This is just as wise as to say, that it is not the breeches which are made for a boy that can cover his nakedness, but the breeches he makes for himself. All this entirely depends upon a comparison of the time saved, by showing the boy how to do a thing, rather than by leaving him to do it for himself. Let the object be, for example, to make a pair of shoes. The boy will effect this object much better if you show him how to make the shoes, than if you merely give him wax, thread, and leather, and leave him to find out all the ingenious abridgements of labour which have been discovered by experience. The object is to turn Latin into English. The scholar will do it much better and sooner if the word is found for him, than if he finds it — much better and sooner if you point out the effect of the terminations, and the nature of the syntax, than if you leave him to detect them for himself. The thing is at last done *by the pupil himself* — for he reads the language — which

was the thing to be done. All the help he has received has only enabled him to make a more economical use of his time, and to gain his end sooner. Never be afraid of wanting difficulties for your pupil; if means are rendered more easy, more will be expected. The animal will be compelled, or induced to do all that he can do. Macadam has made the roads better. Dr. Bell would have predicted, that the horses would get too fat; but the actual result is, that they are compelled to go ten miles an hour instead of eight.

‘For teaching children, this, too, I think is to be observed, that, in most cases, where they stick, they are not to be farther puzzled, by putting them upon finding it out themselves; as by asking such questions as these, viz. — which is the nominative case in the sentence they are to construe? or demanding what “aufero” signifies, to lead them to the knowledge what “abstulere” signifies, &c. when they cannot readily tell. This wastes time only, in disturbing them; for whilst they are learning, and apply themselves with attention, they are to be kept in good humour, and every thing made easy to them, and as pleasant as possible. Therefore, wherever they are at a stand, and are willing to go forwards, help them presently over the difficulty, without any rebuke or chiding; remembering that, where harsher ways are taken, they are the effect only of pride and peevishness in the teacher, who expects children should instantly be masters of as much as he knows; whereas he should rather consider, that his business is to settle in them *habits*, not angrily to inculcate *rules*.’ — *Locke on Education*, p. 74.

Suppose the first five books of Herodotus to be acquired by a key, or literal translation after the

method of Hamilton, so that the pupil could construe them with the greatest accuracy ; — we do not pretend, because the pupil could construe this book, that he could construe any other book equally easy ; we merely say, that the pupil has acquired, by these means, a certain *copia verborum*, and a certain practical knowledge of grammar, which must materially diminish the difficulty of reading the next book ; that his difficulties diminish in a compound ratio with every fresh book he reads with a key — till at last he reads any common book, without a key — and that he attains this last point of perfection in a time incomparably less, and with difficulties incomparably smaller, than in the old method.

There are a certain number of French books, which, when a boy can construe accurately, he may be said, for all purposes of reading, to be master of the French language. No matter how he has attained this power of construing the books. If you try him thoroughly, and are persuaded he is perfectly master of the books — then he possesses the power in question — he understands the language. Let these books, for the sake of the question, be *Telemachus*, the *History of Louis XIV.*, the *Henriade*, the *Plays of Racine*, and the *Revolutions of Vertot*. We would have Hamiltonian keys to all these books, and the Lancasterian method of instruction. We believe these books would be mastered in one sixth part of the time, by these means, that they would be by the old method, of looking out the words in the dictionary, and then coming to say the lesson to the master ; and we believe that the boys, long before they came to the end of this series of books, would be able to do without their keys — to fling away their cork-jackets, and to swim alone. But boys who learn a

language in four or five months, it is said, are apt to forget it again. Why, then, does not a young person, who has been five or six months in Paris, forget his French four or five years afterwards? It has been obtained without any of that labour, which the objectors to the Hamiltonian system deem to be so essential to memory. It has been obtained in the midst of tea and bread and butter, and yet is in a great measure retained for a whole life. In the same manner, the pupils of this new school use a colloquial living dictionary, and, from every principle of youthful emulation, contend with each other in catching the interpretation, and in applying to the lesson before them.

‘If you wish boys to remember any language, make the acquisition of it very tedious and disgusting.’ This seems to be an odd rule: but if it is good for language, it must be good also for every species of knowledge — music, mathematics, navigation, architecture. In all these sciences aversion should be the parent of memory — impediment the cause of perfection. If difficulty is the sauce of memory, the boy who learns with the greatest difficulty will remember with the greatest tenacity; — in other words, the acquisitions of a dunce will be greater and more important than those of a clever boy. Where is the love of difficulty to end? Why not leave a boy to compose his own dictionary and grammar? It is not what is done for a boy, but what he does for himself, that is of any importance. Are there difficulties enough in the old method of acquiring languages? Would it be better if the difficulties were doubled, and thirty years given to languages, instead of fifteen? All these arguments presume the difficulty to be got over, and then the

memory to be improved. But what if the difficulty is shrunk from? What if it puts an end to power, instead of increasing it; and extinguishes, instead of exciting, application? And when these effects are produced, you not only preclude all hopes of learning, or language, but you put an end for ever to all literary habits, and to all improvements from study. The boy who is lexicon-struck in early youth looks upon all books afterwards with horror, and goes over to the block-heads. Every boy would be pleased with books, and pleased with school, and be glad to forward the views of his parents, and obtain the praise of his master, if he found it possible to make tolerably easy progress; but he is driven to absolute despair by gerunds, and wishes himself dead! Progress is pleasure — activity is pleasure. It is impossible for a boy not to make progress, and not to be active in the Hamiltonian method; and this pleasing state of mind we contend to be more favourable to memory, than the languid jaded spirit which much commerce with lexicons never fails to produce.

Translations are objected to in schools justly enough, when they are paraphrases, and not translations. It is impossible, from a paraphrase or very loose translation, to make any useful progress — they retard rather than accelerate a knowledge of the language to be acquired, and are the principal causes of the discredit into which translations have been brought, as instruments of education.

Infandum Regina jubes renovare dolorem,
Regina, jubes renovare dolorem infandum.

Oh! Queen, thou orderest to renew grief not to be spoken of.

‘Oh! Queen, in pursuance of your commands, I enter upon the narrative of misfortunes almost too great for utterance.’

The first of these translations leads us directly to the explication of a foreign language, as the latter insures a perfect ignorance of it.

It is difficult enough to introduce any useful novelty in education, without enhancing its perils by needless and untenable paradox. Mr. Hamilton has made an assertion in his Preface to the Key of the Italian Gospel, which has no kind of foundation in fact, and which has afforded a conspicuous mark for the aim of his antagonists.

‘I have said that each word is translated by its *one sole* undeviating meaning, assuming as an incontrovertible principle in all languages that, with very few exceptions, each word has one meaning only, and can usually be rendered correctly into another by one word only, which one word should serve for its representative at all times and on all occasions.’

Now, it is probable that each word had one meaning only in its origin ; but metaphor and association are so busy with human speech, that the same word comes to serve in a vast variety of senses, and continues to do so long after the metaphors and associations which called it into this state of activity are buried in oblivion. Why may not *jubeo* be translated order, as well as command, or *dolorem* rendered *grief* as well as *sorrow* ? Mr. Hamilton has expressed himself loosely ; but he perhaps means no more than to say, that in school translations, the metaphysical meaning should never be adopted, when the word can be rendered by its primary signification. We shall allow him, however, to detail his own method of making the translation in question.

‘Translations on the Hamiltonian system, according to which this book is translated, must not be confounded with

translations made according to Locke, Clarke, Sterling, or even according to Dumarsais, Fremont, and a number of other Frenchmen, who have made what have been and are yet sometimes called *literal*, and interlineal translations. The latter are, indeed, *interlineal*, but no *literal* translation had ever appeared in any language before those called Hamiltonian, that is, before my Gospel of St. John from the French, the Greek, and Latin Gospels published in London, and L'Hommond's Epitome of the Historia Sacra. These and these only were and are truly literal; that is to say, that every word is rendered in English by a corresponding part of speech, that the grammatical analysis of the phrase is never departed from; that the case of every noun, pronoun, adjective, or particle, and the mood, tense, and person of every verb, are accurately pointed out by appropriate and unchanging signs, so that a grammarian not understanding one word of Italian, would, on reading any part of the translation here given, be instantly able to parse it. In the translations above alluded to, an attempt is made to preserve the correctness of the language into which the different works are translated, but the wish to conciliate this correctness with a literal translation, has only produced a barbarous and uncouth idiom, while it has in every case deceived the unlearned pupil by a translation altogether false and incorrect. Such translations may, indeed, give an idea of what is contained in the book translated, but they will not assist, or at least very little, in enabling the pupil to make out the exact meaning of each word, which is the principal object of Hamiltonian translations. The reader will understand this better by an illustration: A gentleman has lately given a translation of Juvenal according to the plan of the above-mentioned authors, beginning with the words *semper ego*, which he joins and translates, "shall I always be" — if his intention were to teach Latin words, he might as well have said, "shall I always eat beef-steaks?" — True, there is nothing about beef-steaks in *semper ego*, but neither is there about "shall be:" the whole translation is on the same plan, that is to say, that there is not one line of it correct, I had almost said one word, on which the pupil can rely, as the exact equivalent in

English of the Latin word above it. — Not so the translation here given.

‘As the object of the author has been that the pupil should know every word as well as he knows it himself, he has uniformly given it the one sole, precise, meaning which it has in our language, sacrificing every where the beauty, the idiom, and the correctness of the English language to the original, in order to show the perfect idiom, phraseology, and picture of that original as in a glass. So far is this carried, that where the English language can express the precise meaning of the Italian phrase only by a barbarism, this barbarism is employed without scruple — as thus : “e le tenebre non l’hanno ammassa.” — Here the word *tenebre* being plural, if you translate it darkness, you not only give a false translation of the word itself, which is used by the Italians in the plural number, but what is much more important, you lead the pupil into an error about its government, it being the nominative case to *hanno*, which is the third person plural ; it is therefore translated not darkness, but darknesses.’

To make these keys perfect, we rather think there should be a free translation added to the literal one. Not a paraphrase, but only so free as to avoid any awkward or barbarous expression. The comparison between the free and the literal translation would immediately show to young people the peculiarities of the language in which they were engaged.

Literal translation or key — *Oh ! Queen, thou orderest me to renew grief not to be spoken of.*

Free — ‘Oh Queen, thou orderest me to renew my grief, too great for utterance.’

The want of this accompanying free translation is not felt in keys of the Scriptures, because, in fact, the English Bible is a free translation, great part of which the scholar remembers. But in a work entirely unknown, of which a key was given, as full of awkward and barbarous expressions as a key certainly

ought to be, a scholar might be sometimes puzzled to arrive at the real sense. We say as full of awkward and barbarous expressions as it ought to be, because we thoroughly approve of Mr. Hamilton's plan, of always sacrificing English and elegance to sense, when they cannot be united in the key. We are rather sorry Mr. Hamilton's first essay has been in a translation of the Scriptures, because every child is so familiar with them, that it may be difficult to determine whether the apparent progress is ancient recollection or recent attainment; and because the Scriptures are so full of Hebraisms and Syriacisms, and the language so different from that of Greek authors, that it does not secure a knowledge of the language, equivalent to the time employed upon it.

The keys hitherto published by Mr. Hamilton are the Greek, Latin, French, Italian, and German keys to the Gospel of St. John, Perrin's Fables, Latin, Historia Sacra, Latin, French, and Italian Grammar, and Studia Metrica. One of the difficulties under which the system is labouring, is a want of more Keys. Some of the best Greek and Roman classics should be immediately published, with Keys, and by very good scholars. We shall now lay before our readers an extract from one of the public papers respecting the progress made in the Hamiltonian schools.

' Extract from the Morning Chronicle of Wednesday, November 16th, 1825. — Hamiltonian System. — We yesterday were present at an examination of eight lads who have been under Mr. Hamilton since some time in the month of May last, with a view to ascertain the efficacy of his system in communicating a knowledge of languages. These eight lads, all of them between the ages of twelve and fourteen, are the children of poor people, who, when they were first placed

under Mr. Hamilton, possessed no other instruction than common reading and writing. They were obtained from a common country school, through the interposition of a Member of Parliament, who takes an active part in promoting charity schools throughout the country; and the choice was determined by the consent of the parents, and not by the cleverness of the boys.

‘ They have been employed in learning Latin, French, and latterly Italian; and yesterday they were examined by several distinguished individuals, among whom we recognised John Smith, Esq. M.P.; G. Smith, Esq. M.P.; Mr. J. Mill, the historian of British India; Major Camac; Major Thompson; Mr. Cowell, &c. &c. They first read different portions of the Gospel of St. John in Latin, and of Cæsar’s Commentaries, selected by the visitors. The translation was executed with an ease which it would be in vain to expect in any of the boys who attend our common schools, even in their third or fourth year; and proved, that the principle of exciting the attention of boys to the utmost, during the process by which the meaning of the words is fixed in their memory, had given them a great familiarity with so much of the language as is contained in the books above alluded to. Their knowledge of the parts of speech was respectable, but not so remarkable; as the Hamiltonian system follows the natural mode of acquiring language, and only employs the boys in analysing, when they have already attained a certain familiarity with any language.

‘ The same experiments were repeated in French and Italian with the same success, and, upon the whole, we cannot but think the success has been complete. It is impossible to conceive a more impartial mode of putting any system to the test, than to make such an experiment on the children of our peasantry.’

Into the truth of this statement we have personally inquired, and it seems to us to have fallen short of the facts, from the laudable fear of overstating them. The lads selected for the experiment were parish boys of the most ordinary description, reading En-

glish worse than Cumberland curates, and totally ignorant of the rudiments of any other language. They were purposely selected for the experiment by a gentleman who defrayed its expense, and who had the strongest desire to put strictly to the test the efficacy of the Hamiltonian system. The experiment was begun the middle of May, 1825, and concluded on the day of November in the same year mentioned in the extract, exactly six months after. The Latin books set before them were the Gospel of St. John, and parts of Cæsar's Commentaries. Some Italian book or books (what we know not), and a selection of French histories. The visitors put the boys on where they pleased, and the translation was (as the reporter says) executed with an ease which it would be vain to expect in any of the boys who attend our common schools, even in their third or fourth year.*

From experiments and observations which have fallen under our own notice, we do not scruple to make the following assertions. If there were keys to the four Gospels, as there is to that of St. John, any boy or girl of thirteen years of age, and of moderate capacity, studying four hours a day, and beginning with an utter ignorance even of the Greek character, would learn to construe the four Gospels with the most perfect and scrupulous accuracy, in six weeks. Some children, utterly ignorant of French or Italian, would learn to construe the four Gospels, in either of these languages, in three weeks ; the Latin in four weeks ;

* We have left with the bookseller the names of two gentlemen who have verified this account to us, and who were present at the experiment. Their names will at once put an end to all scepticism as to the fact. Two more candid and enlightened judges could not be found.

the German in five weeks. We believe they would do it in a class ; but not to run any risks, we will presume a master to attend upon one student alone for these periods. We assign a master principally, because the application of a solitary boy at that age could not be depended upon ; but if the sedulity of the child were certain, he would do it nearly as well alone. A greater time is allowed for German and Greek, on account of the novelty of the character. A person of mature habits, eager and energetic in his pursuits, and reading seven or eight hours per day, might, though utterly ignorant of a letter of Greek, learn to construe the four Gospels, with the most punctilious accuracy in three weeks, by the Key alone. These assertions we make, not of the Gospels alone, but of any tolerably easy book of the same extent. We mean to be very accurate ; but suppose we are wrong—add 10, 20, 30 per cent. to the time, an average boy of thirteen, in an average school, cannot construe the four Gospels in two years from the time of his beginning the language.

All persons would be glad to read a foreign language, but all persons do not want the same scrupulous and comprehensive knowledge of grammar which a great Latin scholar possesses. Many person may, and do derive great pleasure and instruction from French, German, and Italian books, who can neither speak nor write these languages— who know that certain terminations when they see them, signify present or past time, but who, if they wished to signify present or past time, could not recall these terminations. For many purposes and objects, therefore, very little grammar is wanting.

The Hamiltonian method begins with what all persons want, a facility of construing, and leaves

every scholar to become afterwards as profound in grammar as he (or those who educate him) may choose ; whereas the old method aims at making all more profound grammarians than three fourths wish to be, or than nineteen twentieths *can* be. One of the enormous follies of the enormously foolish education in England, is, that all young men — dukes, fox-hunters, and merchants — are educated as if they were to keep a school, and serve a curacy ; while scarcely an hour in the Hamiltonian education is lost for any variety of life. A grocer may learn enough of Latin to taste the sweets of Virgil ; a cavalry officer may read and understand Homer, without knowing that ἱμῖ comes from εἶω with a smooth breathing, and that it is formed by an improper reduplication. In the mean time, there is nothing in that education which prevents a scholar from knowing (if he wishes to know) what Greek compounds draw back their accents. He may trace verbs in ἱμῖ, from polysyllables in ἰω, or derive endless glory from marking down derivatives in πτω, changing the ε of their primitives into iota.

Thus in the Hamiltonian method, a good deal of grammar necessarily impresses itself upon the mind (*chemin faisant*), as it does in the vernacular tongue, without any rule at all, and merely by habit. How is it possible to read many Latin Keys, for instance, without remarking, willingly or unwillingly, that the first persons of verbs end in *o*, the second in *s*, the third in *t* ? — that the same adjective ends in *us* or *a*, accordingly, as the connected substantive is masculine or feminine, and other such gross and common rules ? An Englishman who means to say, *I will go to London*, does not say, *I could go to London*. He never read a word of grammar in his

life; but he has learnt, by habit, that the word *go*, signifies to proceed or set forth, and by the same habit he learns that future intentions are expressed by *I will*; and by the same habit the Hamiltonian pupil, reading over, and comprehending twenty times more words and phrases than the pupil of the ancient system, insensibly but infallibly fixes upon his mind many rules of grammar. We are far from meaning to say, that the grammar thus acquired will be sufficiently accurate for a first-rate Latin and Greek scholar; but there is no reason why a young person arriving at this distinction, and educated in the Hamiltonian system, may not carry the study of grammar to any degree of minuteness and accuracy. The only difference is, that he begins grammar as a study, after he has made a considerable progress in the language, and not before — a very important feature in the Hamiltonian system, and a very great improvement in the education of children.

The imperfections of the old system proceed in a great measure from a bad and improvident accumulation of difficulties, which must all perhaps, though in a less degree, at one time or another be encountered, but which may be, and in the Hamiltonian system are, much more wisely distributed. A boy who sits down to Greek with lexicon and grammar, has to master an unknown character of an unknown language — to look out words in a lexicon, in the use of which he is inexpert — to guess, by many trials, in which of the numerous senses detailed in the lexicon he is to use the word — to attend to the inflexions of cases and tense — to become acquainted with the syntax of the language — and to become acquainted with these inflexions and this syntax from books written in foreign languages, and full of the most absurd and

barbarous terms, and this at the tenderest age, when the mind is utterly unfit to grapple with any great difficulty; and the boy, who revolts at all this folly and absurdity, is set down for a dunce, and must go into a marching regiment, or on board a man of war! The Hamiltonian pupil has his word looked out for him, its proper sense ascertained, the case of the substantive, the inflexions of the verb pointed out, and the syntactical arrangement placed before his eyes. Where, then, is he to encounter these difficulties? Does he hope to escape them entirely? Certainly not, if it is his purpose to become a great scholar; but he will enter upon them when the character is familiar to his eye — when a great number of Greek words are familiar to his eye and ear — when he has practically mastered a great deal of grammar — when the terminations of verbs convey to him different modifications of time, the terminations of substantives different varieties of circumstance — when the rules of grammar, in short, are a confirmation of previous observation, not an irksome multitude of directions, heaped up without any opportunity of immediate application.

The real way of learning a dead language, is to imitate, as much as possible, the method in which a living language is naturally learnt. When do we ever find a well educated Englishman or Frenchman embarrassed by an ignorance of the grammar of their respective languages? They first learn it practically and unerringly; and then, if they choose to look back and smile at the idea of having proceeded by a number of rules without knowing one of them, by heart, or being conscious that they had any rule at all, this is a philosophical amusement: but who ever thinks of learning the grammar of their own tongue

before they are very good grammarians? Let us hear what Mr. Locke says upon this subject : — ‘ If grammar ought to be taught at any time, it must be to one that can speak the language already ; how else can he be taught the grammar of it? This at least is evident, from the practice of the wise and learned nations amongst the ancients. They made it a part of education to cultivate their own, not foreign languages. The Greeks counted all other nations barbarous, and had a contempt for their languages. And, though the Greek learning grew in credit amongst the Romans towards the end of their commonwealth, yet it was the Roman tongue that was made the study of their youth : their own language they were to make use of, and therefore it was their own language they were instructed and exercised in.

‘ But, more particularly, to determine the proper season for grammar, I do not see how it can reasonably be made any one’s study, but as an introduction to rhetoric. When it is thought time to put any one upon the care of polishing his tongue, and of speaking better than the illiterate, then is the time for him to be instructed in the rules of grammar, and not before. For grammar being to teach men, not to speak, but to speak correctly, and according to the exact rules of the tongue, which is one part of elegance, there is little use of the one to him that has no need of the other. Where rhetoric is not necessary, grammar may be spared. I know not why any one should waste his time, and beat his head about the Latin grammar, who does not intend to be a critic, or make speeches, and write despatches in it. When any one finds in himself a necessity or disposition to study any foreign language to the bottom, and to be nicely exact in the knowledge of it, it will be time enough to take a

grammatical survey of it. If his use of it be only to understand some books writ in it, without a critical knowledge of the tongue itself, reading alone, as I have said, will attain that end, without charging the mind with the multiplied rules and intricacies of grammar.' — *Locke on Education*, p. 78. folio.

In the Eton Grammar, the following very plain and elementary information is conveyed to young gentlemen utterly ignorant of every syllable of the language:—

'Nomina anomala quæ contrahuntur sunt, 'Ολοπαθῆ, quæ contrahuntur in omnibus, ut γοος γοῦς, &c. Ολιγοπαθῆ, quæ in paucioribus casibus contrahuntur, ut substantiva Barytonia in ὕρ. Imparyllatria in οὐρ,' &c. &c.

From the Westminster Grammar we make the following extract—and some thousand rules, conveyed in poetry of equal merit, must be fixed upon the mind of the youthful Grecian, before he advances into the interior of the language.

'ω finis thematis finis utriusque futuri est
Post liquidam in primo, vel in unoquoque secundo,
ω circumflexum est. Ante ω finale character
Explicitus σε primi est implicitusque futuri
ω itaque in quo σ quasi plexum est solitu in σω.'

Westminster Greek Grammar, 1814.

Such are the easy initiations of our present methods of teaching. The Hamiltonian system, on the other hand, 1. teaches an unknown tongue by the closest interlinear translation, instead of leaving a boy to explore his way by the lexicon or dictionary. 2. It postpones the study of grammar till a considerable progress has been made in the language, and a great degree of practical grammar has been acquired. 3. It substitutes the cheerfulness and competition of the

Lancasterian system for the dull solitude of the Dictionary. By these means, a boy finds he is making a progress, and learning something from the very beginning. He is not overwhelmed with the first appearance of insuperable difficulties ; he receives some little pay from the first moment of his apprenticeship, and is not compelled to wait for remuneration till he is out of his time. The student having acquired the great art of understanding the sense of what is written in another tongue, may go into the study of the language as deeply and as extensively as he pleases. The old system aims at beginning with a depth and accuracy which many men never will want, which disgusts many from arriving even at moderate attainments, and is a less easy, and not more certain road to a profound skill in languages, than if attention to grammar had been deferred to a later period.

In fine, we are strongly persuaded, that the time being given, this system will make better scholars ; and the degree of scholarship being given, a much shorter time will be needed. If there is any truth in this, it will make Mr. Hamilton one of the most useful men of his age ; for if there is any thing which fills reflecting men with melancholy and regret, it is the waste of mortal time, parental money, and puerile happiness, in the present method of pursuing Latin and Greek.

COUNSEL FOR PRISONERS. (E. REVIEW, 1826.)

Stockton on the Practice of not allowing Counsel for Prisoners accused of Felony. 8vo. London, 1826.

ON the sixth of April 1824, Mr. George Lamb (a gentleman who is always the advocate of whatever is honest and liberal), presented the following petition from several jurymen in the habit of serving on juries at the Old Bailey : —

‘ That your petitioners, fully sensible of the invaluable privilege of Jury trials, and desirous of seeing them as complete as human institutions will admit, feel it their duty to draw the attention of the House to the restrictions imposed on the prisoner’s counsel, which, they humbly conceive, have strong claims to a legislative remedy. With every disposition to decide justly, the petitioners have found, by experience, in the course of their attendances as Jurymen at the Old Bailey, that the opening statements for the prosecution too frequently leave an impression more unfavourable to the prisoner at the bar, than the evidence of itself could have produced; and it has always sounded harsh to the petitioners to hear it announced from the bench, that the counsel, to whom the prisoner has committed his defence, cannot be permitted to address the jury in his behalf, nor reply to the charges which have, or have not, been substantiated by the witnesses. The petitioners have felt their situation peculiarly painful and embarrassing when the prisoner’s faculties, perhaps surprised by such an intimation, are too much absorbed in the difficulties of his unhappy circumstances to admit of an effort towards his own justification, against the statements of the prosecutor’s counsel, often unintentionally aggravated through zeal or misconception; and it is purely with a view to the attainment of impartial justice, that the petitioners humbly submit to the serious consideration of the House the

expediency of allowing every accused person the full benefit of counsel, as in cases of misdemeanour, and according to the practice of the civil courts.'

With the opinions so sensibly and properly expressed by these jurymen, we most cordially agree. We have before touched incidentally on this subject ; but shall now give to it a more direct and a fuller examination. We look upon it as a very great blot in our over-praised criminal code ; and no effort of ours shall be wanting, from time to time, for its removal.

We have now the benefit of discussing these subjects under the government of a Home Secretary of State, whom we may (we believe) fairly call a wise, honest, and high principled man — as he appears to us, without wishing for innovation, or having any itch for it, not to be afraid of innovation*, when it is gradual and well considered. He is, indeed, almost the only person we remember in his station, who has not considered sound sense to consist in the rejection of every improvement, and loyalty to be proved by the defence of every accidental, imperfect, or superannuated institution.

If this petition of jurymen be a real *bonâ fide* petition, not the result of solicitation — and we have no reason to doubt it — it is a warning which the legislature cannot neglect, if it mean to avoid the disgrace of seeing the lower and middle orders of mankind making laws for themselves, which the Government

* We must always except the Catholic question. Mr. Peel's opinions on this subject (giving him credit for sincerity), have always been a subject of real surprise to us. It must surely be some mistake between the Right Honourable Gentleman and his Chaplain ! They have been travelling together ; and some of the Parson's notions have been put up in Mr. Peel's head by mistake. We yet hope he will return them to their rightful owner.

is at length compelled to adopt as measures of their own. The judges and the Parliament would have gone on to this day, hanging, by wholesale, for the forgeries of bank notes, if juries had not become weary of the continual butchery, and resolved to acquit. The proper execution of laws must always depend, in great measure, upon public opinion ; and it is undoubtedly most discreditable to any men intrusted with power, when the governed turn round upon their governors, and say, ‘Your laws are so cruel, or so foolish, we cannot, and *will not* act upon them.’

The particular improvement, of allowing counsel to those who are accused of felony, is so far from being unnecessary, from any extraordinary indulgence shown to English prisoners, that we really cannot help suspecting, that not a year elapses in which many innocent persons are not found guilty. How is it possible, indeed, that it can be otherwise ? There are seventy or eighty persons to be tried for various offences at the Assizes, who have lain in prison for some months ; and fifty of whom, perhaps, are of the lowest order of the people, without friends in any better condition than themselves, and without one single penny to employ in their defence. How are they to obtain witnesses ? No attorney can be employed—no subpoena can be taken out ; the witnesses are fifty miles off, perhaps—totally uninstructed—living from hand to mouth—utterly unable to give up their daily occupation to pay for their journey, or for their support when arrived at the town of trial—and, if they could get there, not knowing where to go, or what to do. It is impossible but that a human being, in such a helplessness situation, must be found guilty ; for as he cannot give evidence for himself,

and has not a penny to fetch those who can give it for him, any story told against him must be taken for true (however false); since it is impossible for the poor wretch to contradict it. A brother or a sister may come — and support every suffering and privation themselves in coming; but the prisoner cannot often have such claims upon the persons who have witnessed the transaction, nor any other claims but those which an unjustly accused person has upon those whose testimony can exculpate him — and who probably must starve themselves and their families to do it. It is true, a case of life and death will rouse the poorest persons, every now and then, to extraordinary exertions, and they may tramp through mud and dirt to the assize town to save a life — though even this effort is precarious enough: but imprisonment, hard labour, or transportation, appeal less forcibly than death, — and would often appeal for evidence in vain, to the feeble and limited resources of extreme poverty. It is not that a great proportion of those accused are not guilty — but that some are not — and are utterly without means of establishing their innocence. We do not believe they are often accused from wilful and corrupt perjury: but the prosecutor is himself mistaken. The crime has been committed; and in his thirst for vengeance, he has got hold of the wrong man. The wheat was stolen out of the barn; and, amidst many other collateral circumstances, the witnesses (paid and brought up by a wealthy prosecutor, who is repaid by the county), swear that they saw a man, very like the prisoner, with a sack of corn upon his shoulder, at an early hour of the morning, going from the barn in the direction of the prisoner's cottage! Here is one link, and a very material link, of a long chain of circum-

stantial evidence. Judge and jury must give it weight, till it is contradicted. In fact, the prisoner did not steal the corn ; he was, to be sure, out of his cottage at the same hour — and that also is proved — but travelling in a totally different direction, — and was seen to be so travelling by a stage coachman passing by, and by a market gardener. An attorney with money in his pocket, whom every moment of such employ made richer by six-and-eight-pence, would have had the two witnesses ready, and at rack and manger, from the first day of the assize ; and the innocence of the prisoner would have been established : but by what possible means is the destitute ignorant wretch himself to find or to produce such witnesses ? or how can the most humane jury, and the most acute judge, refuse to consider him as guilty, till his witnesses *are* produced ? We have not the slightest disposition to exaggerate, and, on the contrary, should be extremely pleased to be convinced that our apprehensions were unfounded : but we have often felt extreme pain at the hopeless and unprotected state of prisoners ; and we cannot find any answer to our suspicions, or discover any means by which this perversion of justice, under the present state of the law, can be prevented from taking place. Against the prisoner are arrayed all the resources of an angry prosecutor, who has certainly (let who will be the culprit), suffered a serious injury. He has his hand, too, in the public purse ; for he prosecutes at the expense of the county. He cannot even relent ; for the magistrate has bound him over to indict. His witnesses cannot fail him ; for they are all bound over by the same magistrate to give evidence. He is out of prison, too, and can exert himself.

The prisoner, on the other hand, comes into Court,

squalid and depressed from long confinement — utterly unable to tell his own story from want of words and want of confidence, and as unable to produce evidence for want of money. His fate accordingly is obvious ; — and that there are many innocent men punished every year, for crimes they have not committed, appears to us to be extremely probable. It is, indeed, scarcely possible it should be otherwise : and, as if to prove the fact, every now and then, a case of this kind *is* detected. Some circumstances come to light between sentence and execution, immense exertions are made by humane men ; time is gained, and the innocence of the condemned person completely established. In Elizabeth Caning's case, two women were capitally convicted, ordered for execution — and at last found innocent, and respited. Such, too, was the case of the men who were sentenced ten years ago, for the robbery of Lord Cowper's steward. 'I have myself (says Mr. Scarlett) *often* seen persons I thought innocent convicted, and the guilty escape, for want of some acute and intelligent counsel to show the bearings of the different circumstances on the conduct and situation of the prisoner.' — *House of Commons Debates, April 25th, 1826.* We were delighted to see, in this last debate, both Mr. Brougham and Mr. Scarlett profess themselves friendly to Mr. Lamb's motion.

But in how many cases has the injustice proceeded without any suspicion being excited ? and even if we could reckon upon men being watchful in capital cases, where life is concerned, we are afraid it is in such cases alone that they ever besiege the Secretary of State, and compel his attention. We never remember any such interference to save a man unjustly condemned to the hulks or the tread-mill ; and yet

there are certainly more condemnations to these minor punishments than to the gallows : but then it is all one — who knows or cares about it? If Harrison or Johnson has been condemned, after regular trial by jury, to six months' tread-mill, because Harrison and Johnson were without a penny to procure evidence — who knows or cares about Harrison or Johnson? how can they make themselves heard? or in what way can they obtain redress? It worries rich and comfortable people to hear the humanity of our penal laws called in question. There is talk of a society for employing discharged prisoners : might not something be effected by a society instituted for the purpose of providing to poor prisoners a proper defence, and a due attendance of witnesses? But we must hasten on from this disgraceful neglect of poor prisoners, to the particular subject of complaint we have proposed to ourselves.

The proposition is, *That the prisoner accused of felony ought to have the same power of selecting counsel to speak for him as he has in cases of treason and misdemeanour, and as defendants have in all civil actions.*

Nothing can be done in any discussion upon any point of law in England, without quoting Mr. Justice Blackstone. Mr. Justice Blackstone, we believe, generally wrote his Commentaries late in the evening, with a bottle of wine before him ; and little did he think, as each sentence fell from the glass and pen, of the immense influence it might hereafter exercise upon the laws and usages of his country. 'It is' (says this favourite writer) 'not at all of a piece with the rest of the humane treatment of prisoners by the English law ; for upon what face of reason can that assistance be denied to save the life of a man,

which yet is allowed him in prosecutions for every petty trespass?' Nor indeed, strictly speaking, is it a part of our ancient law; for the Mirror, having observed the necessity of counsel in civil suits, who know how to forward and defend the cause by the rules of law and customs of the realm, immediately subjoins, 'and more necessary are they for defence upon indictment and appeals of felony, than upon any other venial crimes.' To the authority of Blackstone may be added that of Sir John Hall, in Hollis's case; of Sir Robert Atkyns, in Lord Russell's case; and of Sir Bartholomew Shower, in the arguments for a New Bill of Rights, in 1682. 'In the name of God,' says this judge, 'what harm can accrue to the public in general, or to any man in particular, that, in cases of State-treason, counsel should not be allowed to the accused? What rule of justice is there to warrant its denial, when, in a civil case of a halfpenny cake, he may plead either by himself or by his advocate? That the court is counsel for the prisoner can be no effectual reason; for so they are for each party, that right may be done.'—*Somer's Tracts*, vol. ii. p. 568. In the trial of Thomas Rosewell, a dissenting clergyman, for high treason in 1684, *Judge Jeffries*, in summing up, confessed to the jury, 'that he thought it a hard case, that a man should have counsel to defend himself for a twopenny trespass, and his witnesses be examined upon oath; but if he stole, committed murder or felony, nay, high treason, where life, estate, honour, and all were concerned, that he should neither have counsel, nor have his witnesses examined upon oath.'—*Howell's State Trials*, vol. x. p. 207.

There have been two capital errors in the criminal codes of feudal Europe, from which a great variety

of mistake and injustice have proceeded ; the one, a disposition to confound accusation with guilt ; the other, to mistake a defence of prisoners accused by the Crown, for disloyalty and disaffection to the Crown ; and from these errors our own code has been slowly and gradually recovering, by all those struggles and exertions which it always costs to remove *folly sanctioned by antiquity*. In the early periods of our history, the accused person could call no evidence : — then, for a long time, his evidence against the King could not be examined upon oath ; consequently, he might as well have produced none, as all the evidence against him was upon oath. Till the reign of Anne, no one accused of felony could produce witnesses upon oath ; and the old practice was vindicated, in opposition to the new one, introduced under the statute of that day, on the grounds of humanity and tenderness to the prisoner ! because, as his witnesses were not restricted by an oath, they were at liberty to indulge in simple falsehood as much as they pleased ; — so argued the blessed defenders of nonsense in those days. Then it was ruled to be indecent and improper that counsel should be employed against the Crown ; and, therefore, the prisoner accused of treason could have no counsel. In like manner, a party accused of felony could have no counsel to assist him in the trial. Counsel might indeed stay in the court, but apart from the prisoner, with whom they could have no communication. They were not allowed to put any question, or to suggest any doubtful point of law ; but if the prisoner (likely to be a weak unlettered man) could himself suggest any doubt in matter of law, the court determined first if the question of law should be entertained, and then assigned counsel to argue it. In those times,

too, the jury were punishable if they gave a false verdict against the King, but were *not* punishable if they gave a false verdict against the prisoner. The preamble of the Act of 1696 runs thus — ‘Whereas it is expedient that persons charged with high treason should make a full and sufficient defence.’ Might it not be altered to *persons charged with any species or degree of crime*? All these errors have given way to the force of truth, and to the power of common sense and common humanity — the attorney and solicitor-general, for the time being, always protesting against each alteration, and regularly and officially prophesying the utter destruction of the whole jurisprudence of Great Britain. There is no man now alive, perhaps, so utterly foolish, as to propose that prisoners should be prevented from producing evidence upon oath, and being heard by their counsel in cases of high treason; and yet it cost a struggle for *seven* sessions to get this measure through the two houses of Parliament. But mankind are much like the children they beget — they always make wry faces at what is to do them good; and it is necessary sometimes to hold the nose, and force the medicine down the throat. They enjoy the health and vigour consequent upon the medicine; but cuff the doctor, and sputter at his stuff!

A most absurd argument was advanced in the honourable house, that the practice of employing counsel would be such an expense to the prisoner! — just as if any thing was so expensive as being hanged! What a fine topic for the ordinary! ‘You are going’ (says that exquisite divine) ‘to be hanged to-morrow, it is true, but consider what a sum you have saved! Mr. Scarlett or Mr. Brougham might certainly have presented arguments to the jury,

which would have insured your acquittal ; but do you forget that gentlemen of their eminence must be recompensed by large fees, and that, if your life had been saved, you would actually have been out of pocket above 20l. ? You will now die with the consciousness of having obeyed the dictates of a wise economy ; and with a grateful reverence for the laws of your country, which prevents you from running into such unbounded expense — so let us now go to prayers.’

It is ludicrous enough to recollect, when the employment of counsel is objected to on account of the expense to the prisoner, that the same merciful law, which, to save the prisoner’s money, has *denied* him counsel, and produced his conviction, seizes upon all his savings the moment he is convicted.

Of all false and foolish dicta, the most trite and the most absurd is that which asserts that the judge is counsel for the prisoner. We do not hesitate to say that this is merely an unmeaning phrase, invented to defend a pernicious abuse. The judge *cannot* be counsel for the prisoner, *ought not* to be counsel for the prisoner, never *is* counsel for the prisoner. To force an ignorant man into a court of justice, and to tell him that the judge is his counsel, appears to us quite as foolish as to set a hungry man down to his meals, and to tell him that the table was his dinner. In the first place, a counsel should always have private and previous communication with the prisoner, which the judge, of course, cannot have. The prisoner reveals to his counsel how far he is guilty, or he is not ; states to him all the circumstances of his case — and might often enable his advocate, if his advocate were allowed to speak, to explain a long string of circumstantial evidence, in a

manner favourable to the innocence of his client. Of all these advantages, the judge, if he had every disposition to befriend the prisoner, is of course deprived. Something occurs to a prisoner in the course of the cause ; he suggests it in a whisper to his counsel, doubtful if it is a wise point to urge or not. His counsel thinks it of importance, and would urge it, if his mouth were not shut. Can a prisoner have this secret communication with a judge, and take his advice, whether or not he, the judge, shall mention it to the jury ? The counsel has (after all the evidence has been given) a bad opinion of his client's case ; but he suppresses that opinion ; and it is his duty to do so. He is not to decide ; that is the province of the jury : and, in spite of his own opinion, — his client may be innocent. He is brought there (or would be brought there if the privilege of speech were allowed) for the express purpose of saying all that could be said on one side of the question. He is a weight in *one* scale, and some one else holds the balance. This is the way in which truth is elicited in civil, and would be in criminal cases. But does *the judge* ever assume the appearance of believing a prisoner to be innocent whom he thinks to be guilty ? If the prisoner advances inconclusive or weak arguments, does not the judge say they are weak and inconclusive, and does he not often sum up against his own client ? How then is he counsel for the prisoner ? If the counsel for the prisoner were to see a strong point, which the counsel for the prosecution had missed, would he supply the deficiency of his antagonist, and urge what had been neglected to be urged ? But is it not the imperious duty of the judge to do so ? How then can these two functionaries stand in the same relation to the prisoner ? In

fact the only meaning of the phrase is this, that the judge will not suffer any undue advantage to be taken of the ignorance and helplessness of the prisoner — that he will point out any evidence or circumstance in his favour — and see that equal justice is done to both parties. But in this sense he is as much the counsel of the prosecutor as of the prisoner. This is all the judge can do, or even pretends to do; but he can have no previous communication with the prisoner — he can have no confidential communication in court with the prisoner before he sums up; he cannot fling the whole weight of his understanding into the opposite scale against the counsel for the prosecution, and produce that collision of faculties, which, in all other cases but those of felony, is supposed to be the happiest method of arriving at truth. Baron Garrow, in his charge to the grand jury at Exeter, on the 16th August, 1824, thus expressed his opinion of a judge being counsel for the prisoner. ‘It has been said, and truly said, that in criminal courts, judges were counsel for the prisoners. So undoubtedly they were, as far as they could to prevent undue prejudice, to guard against improper influence being excited against prisoners; but it was impossible for them to go farther than this; for they could not suggest the course of defence prisoners ought to pursue; for judges only saw the depositions so short a time before the accused appeared at the bar of their country, that it was quite impossible for them to act fully in that capacity.’ The learned Baron might have added, that it would be more correct to call the judge counsel for the prosecution: for his only previous instructions were the depositions for the prosecution, from which, in the absence of counsel, he examined the evidence against the pri-

soner. On the prisoner's behalf he had no instructions at all.

Can any thing, then, be more flagrantly and scandalously unjust, than, in a long case of circumstantial evidence, to refuse to a prisoner the benefit of counsel? A foot-mark, a word, a sound, a tool dropped, all gave birth to the most ingenious inferences; and the counsel for the prosecution is so far from being blameable for entering into all these things, that they are all essential to the detection of guilt, and they are all links of a long and intricate chain: but if a close examination into, and a logical statement of, all these circumstances be necessary for the establishment of guilt, is not the same closeness of reasoning and the same logical statement necessary for the establishment of innocence? If justice cannot be done to society without the intervention of a practised and ingenious mind, who may connect all these links together, and make them clear to the apprehension of a jury, *can* justice be done to the prisoner, unless similar practice and similar ingenuity are employed to detect the flaws of the chain, and to point out the disconnection of the circumstances?

Is there any one gentleman in the House of Commons, who, in yielding his vote to this paltry and perilous fallacy of the judge being counsel for the prisoner, does not feel, that, were he himself a criminal, he would prefer almost any counsel at the bar, to the tender mercies of the judge? How strange that any man who could make his election would eagerly and diligently surrender this exquisite privilege, and addict himself to the perilous practice of giving fees to counsel? Nor let us forget, in considering judges as counsel for the prisoner, that there have been such men as Chief Justice Jeffries, Mr.

Justice Page, and Mr. Justice Alybone, and that, in bad times, such men may reappear. ‘If you do not allow me counsel, my Lords (says Lord Lovat), it is impossible for me to make any defence, by reason of my infirmity. I do not see, I do not hear. I come up to the bar at the hazard of my life. I have fainted several times, I have been up so early, ever since four o’clock this morning. I therefore ask for assistance ; and if you do not allow me counsel, or such aid as is necessary, it will be impossible for me to make any defence at all.’ Though Lord Lovat’s guilt was evident, yet the managers of the impeachment felt so strongly the injustice which was done, that, by the hands of Sir W. Young, the chief manager, a bill was brought into Parliament, to allow counsel to persons impeached by that House, which was not previously the case ; so that the evil is already done away with, in a great measure, to persons of rank : it so happens in legislation, when a gentleman suffers, public attention is awakened to the evil of laws. Every man who makes laws says, ‘This may be my case :’ but it requires the repeated efforts of humane men, or, as Mr. North calls them, dilettanti philosophers, to awaken the attention of law-makers to evils from which they are themselves exempt. We do not say this to make the leaders of mankind unpopular, but to rouse their earnest attention in cases where the poor only are concerned, and where neither good nor evil can happen to themselves.

A great stress is laid upon the moderation of the opening counsel ; that is, he does not conjure the farmers in the jury-box, by the love which they bear to their children — he does not declaim upon blood guiltiness — he does not describe the death of Abel by Cain, the first murderer — he does not describe

scattered brains, ghastly wounds, pale features, and hair clotted with gore — he does not do a thousand things, which are not in English taste, and which it would be very foolish and very vulgar to do. We readily allow all this. But yet, if it be a cause of importance, it is essentially necessary to our counsellor's reputation that his man should be hung! And accordingly, with a very calm voice, and composed manner, and with many expressions of candour, he sets himself to comment astutely upon the circumstances. Distant events are immediately connected; meaning is given to insignificant facts; new motives are ascribed to innocent actions; farmer gives way after farmer in the jury-box; and a rope of eloquence is woven round the prisoner's neck! Every one is delighted with the talents of the advocate; and because there has been no noise, no violent action, and no consequent perspiration, he is praised for his candour and forbearance, and the lenity of our laws is the theme of universal approbation. In the meantime, the speech-maker and the prisoner know better.

We should be glad to know of any one nation in the world, taxed by kings, or even imagined by poets (except the English), who have refused to prisoners the benefit of counsel. Why is the voice of humanity heard every where else, and disregarded here? In Scotland, the accused have not only counsel to speak for them, but a copy of the indictment, and a list of the witnesses. In France, in the Netherlands, in the whole of Europe, counsel are allotted as a matter of course. Every where else but here, accusation is considered as unfavourable to the exercise of human faculties. It is admitted to be that crisis in which, above all others, an unhappy man wants the aid of eloquence, wisdom, and coolness. In France, the Napoleon Code has provided not only that counsel

should be allowed to the prisoner, but that, as with us in Scotland, his counsel should have the last word.

It is a most affecting moment in a court of justice, when the evidence has all been heard, and the Judge asks the prisoner what he has to say in his defence. The prisoner, who has (by great exertions, perhaps of his friends,) saved up money enough to procure counsel, says to the Judge, ‘that he leaves his defence to his counsel.’ We have often blushed for English humanity to hear the reply. ‘Your counsel cannot speak for you, you must speak for yourself;’ and this is the reply given to a poor girl of eighteen—to a foreigner—to a deaf man—to a stammerer—to the sick—to the feeble—to the old—to the most abject and ignorant of human beings! It is a reply, we must say, at which common sense and common feeling revolt:—for it is full of brutal cruelty, and of base inattention of those who make laws, to the happiness of those for whom laws were made. We wonder that any Juryman can convict under such a shocking violation of all natural justice. The iron age of Clovis and Clottaire can produce no more atrocious violation of every good feeling, and every good principle. Can a sick man find strength and nerves to speak before a large assembly?—can an ignorant man find words?—can a low man find confidence? Is not he afraid of becoming an object of ridicule?—can he believe that his expressions will be understood? How often have we seen a poor wretch, struggling against the agonies of his spirit, and the rudeness of his conceptions, and his awe of better dressed men and better taught men, and the shame which the accusation has brought upon his head, and the sight of his parents and children gazing at him in the Court, for the last time, perhaps, and

after a long absence? The mariner sinking in the wave does not want a helping hand more than does this poor wretch. But help is denied to all! Age cannot have it, nor ignorance, nor the modesty of women! One hard uncharitable rule silences the defenders of the wretched, in the worst of human evils; and, at the bitterest of human moments, mercy is blotted out from the ways of men!

Suppose a crime to have been committed under the influence of insanity; is the insane man, now convalescent, to plead his own insanity? — to offer arguments to show that he must have been mad? — and, by the glimmerings of his returning reason, to prove that, at a former period, that same reason was utterly extinct? These are the cruel situations into which Judges and Courts of Justice are thrown by the present state of the law.

There is a Judge now upon the Bench, who never took away the life of a fellow-creature without shutting himself up alone, and giving the most profound attention to every circumstance of the case! and this solemn act he always premises with his own beautiful prayer to God, that he will enlighten him with his Divine Spirit in the exercise of this terrible privilege! Now would it not be an immense satisfaction to this feeling and honourable magistrate, to be sure that every witness on the side of the prisoner had been heard, and that every argument which could be urged in his favour had been brought forward, by a man whose duty it was to see only on one side of the question, and whose interest and reputation were thoroughly embarked in this partial exertion? If a Judge fails to get at the truth, after these instruments of investigation are used, his failure must be attributed to the limited powers of man — not to the want

of good inclination, or wise institutions. We are surprised that such a measure does not come into Parliament, with the strong recommendation of the Judges. It is surely better to be a day longer on the circuit, than to murder rapidly in ermine.

It is argued, that, among the various pleas for mercy that are offered, no prisoner has ever urged to the Secretary of State the disadvantage of having no counsel to plead for him ; but a prisoner who dislikes to undergo his sentence, naturally addresses to those who can reverse it such arguments only as will produce, in the opinion of the referee, a pleasing effect. He does not therefore find fault with the established system of jurisprudence, but brings forward facts and arguments to prove his own innocence. Besides, how few people there are who can elevate themselves from the acquiescence in what *is*, to the consideration of what *ought to be* ; and if they could do so, the way to get rid of a punishment is not (as we have just observed) to say, ‘ You have no right to punish me in this manner ’ (but to say), ‘ I am innocent of the offence.’ The fraudulent baker at Constantinople, who is about to be baked to death in his own oven, does not complain of the severity of baking bakers, but promises to use more flour and less fraud.

Whence comes it (we should like to ask Sir John Singleton Copley, who seems to dread so much the conflicts of talent in criminal cases) that a method of getting at truth which is found so serviceable in civil cases should be so much objected to in criminal cases ? Would you have all this wrangling and bickering, it is asked, and contentious eloquence, when the life of a man is concerned ? Why not, as well as when his property is concerned ? It is either a good means of doing justice, or it is not, that two understandings

should be put in opposition to each other, and that a third should decide between them. Does this open every view which can bear upon the question? Does it in the most effectual manner watch the Judge, detect perjury, and sift evidence? If not, why is it suffered to disgrace our civil institutions? If it effect all these objects, why is it not incorporated into our criminal law? Of what importance is a little disgust at professional tricks, if the solid advantage gained is a nearer approximation to truth? Can any thing be more preposterous than this preference of taste to justice, and of solemnity to truth? What an eulogium of a trial to say, 'I am by no means satisfied that the Jury were right in finding the prisoner guilty; but every thing was carried on with the utmost decorum. The verdict was wrong; but there was the most perfect propriety and order in the proceedings. The man will be unfairly hanged; but all was genteel!' If solemnity is what is principally wanted in a court of justice, we had better study the manners of the old Spanish Inquisition; but if battles with the Judge, and battles among the counsel, are the best method, as they certainly are, of getting at the truth, better tolerate this philosophical Billingsgate, than persevere, *because* the life of a man is at stake, in solemn and polished injustice.

Why would it not be just as wise and equitable to leave the defendant without counsel in civil cases — and to tell him that the Judge was his counsel? And if the reply is to produce such injurious effects as are anticipated upon the minds of the Jury in criminal cases, why not in civil cases also? In twenty-eight cases out of thirty, the verdict in civil cases is correct; in the two remaining cases, the error may proceed from other causes than the right of reply; and

yet the right of reply has existed in all. In a vast majority of cases, the verdict is for the plaintiff, not because there is a right of reply, but because he who has it in his power to decide whether he will go to law or not, and resolves to expose himself to the expense and trouble of a lawsuit, has probably a good foundation for his claim. Nobody, of course, can intend to say that the majority of verdicts in favour of plaintiffs are against justice, and merely attributable to the advantage of a last speech. If this were the case, the sooner advocates are turned out of court the better—and then the improvement of both civil and criminal law would be an abolition of all speeches; for those who dread the effect of the last word upon the fate of the prisoner, must remember that there is at present always a last speech against the prisoner; for, as the counsel for the prosecution cannot be replied to, *his* is the last speech.

There is certainly this difference between a civil and a criminal case—that in one a new trial can be granted, in the other not. But you must first make up your mind whether this system of contentious investigation by opposite advocates is or is not the best method of getting at truth: if it be, the more irremediable the decision, the more powerful and perfect should be the means of deciding; and then it would be a less oppression if the civil defendant were deprived of counsel than the criminal prisoner. When an error has been committed, the advantage is greater to the latter of these persons than to the former;—the criminal is not tried again, but pardoned; while the civil defendant must run the chance of another Jury.

If the effect of reply, and the contention of counsel, have all these baneful consequences in felony, why

not also in misdemeanour and high-treason? Half the cases at Sessions are cases of misdemeanour, where counsel are employed, and half-informed Justices preside instead of learned Judges. There are no complaints of the unfairness of verdicts, though there are every now and then of the severity of punishments. Now, if the reasoning of Mr. Lamb's opponents were true, the disturbing force of the prisoner's counsel must fling every thing into confusion. The Court for misdemeanours must be a scene of riot and perplexity; and the detection and punishment of crime must be utterly impossible: and yet in the very teeth of these objections, such courts of justice are just as orderly in one set of offences as the other; and the conviction of a guilty person just as certain and as easy.

The prosecutor (if this system were altered) would have the choice of counsel; so he has now — with this difference, that, at present, his counsel cannot be answered nor opposed. It would be better, in all cases, if two men of exactly equal talent could be opposed to each other; but as this is impossible, the system must be taken with this inconvenience; but there can be no inequality between counsel so great as that between any counsel and the prisoner pleading for himself. 'It has been lately my lot,' says Mr. Denman, 'to try two prisoners who were deaf and dumb, and who could only be made to understand what was passing by the signs of their friends. The cases were clear and simple; but if they had been circumstantial cases, in what a situation would the Judge and Jury be placed, when the prisoner could have no counsel to plead for him.' — *Debates of the House of Commons, April 25. 1826.*

The folly of being counsel for yourself is so noto-

rious in civil cases, that it is grown into a proverb. But the cruelty of the law compels a man, in criminal cases, to be guilty of a much greater act of folly, and to trust his life to an advocate, who, by the common sense of mankind, is pronounced to be inadequate to defend the possession of an acre of land.

In all cases it must be supposed, that reasonably convenient instruments are selected to effect the purpose in view. A Judge may be commonly presumed to understand his profession, and a Jury to have a fair allowance of common sense ; but the objectors to the improvement we recommend appear to make no such suppositions. Counsel are always to make flashy addresses to the passions. Juries are to be so much struck with them, that they are always to acquit or to condemn, contrary to justice ; and Judges are always to be so biassed, that they are to fling themselves rashly into the opposite scale against the prisoner. Many cases of misdemeanour consign a man to infamy, and cast a blot upon his posterity. Judge and Juries must feel these cases as strongly as any cases of felony ; and yet, in spite of this, and in spite of the free permission of counsel to speak, they preserve their judgment, and command their feelings surprisingly. Generally speaking, we believe none of these evils would take place. Trumpery declamation would be considered as discreditable to the counsel, and would be disregarded by the Jury. The Judge and Jury (as in civil cases) would gain the habit of looking to the facts, selecting the arguments, and coming to reasonable conclusions. It is so in all other countries — and it would be so in this. But the vigilance of the Judge is to relax, if there is counsel for the pri-

soner. Is, then, the relaxed vigilance of the Judges complained of, in high treason, in misdemeanour, or in civil cases? This appears to us really to shut up the debate, and to preclude reply. *Why* is the practice so good in all other cases, and so pernicious in felony alone? This question has never received even the shadow of an answer. There is no one objection against the allowance of counsel to prisoners in felony, which does not apply to them in all cases. If the vigilance of Judges depend upon this injustice to the prisoner, then, the greater injustice to the prisoner, the more vigilance; and so the true method of perfecting the Bench would be, to deny the prisoner the power of calling witnesses, and to increase as much as possible the disparity between the accuser and the accused. We hope men are selected for *the Judges of Israel*, whose vigilance depends upon better and higher principles.

There are three methods of arranging a trial, as to the mode of employing counsel — that both parties should have counsel, or neither — or only one. The first method is the best; the second is preferable to the last; and the last, which is our present system, is the worst possible. If counsel were denied to either of the parties, if it be necessary that any system of jurisprudence should be disgraced by such an act of injustice, they should rather be denied to the prosecutor than to the prisoner.

But the most singular caprice of the law is, that counsel are permitted in very high crimes, and in very small crimes, and denied in crimes of a sort of medium description. In high treason, where you mean to murder Lord Liverpool, and to levy war against the people, and to blow up the two Houses of Parliament, all the lawyers of Westminster Hall may

talk themselves dry, and the Jury deaf. Lord Eldon, when at the bar, has been heard for nine hours on such subjects. If, instead of producing the destruction of five thousand people, you are indicted for the murder of one person, here human faculties, from the diminution of guilt, are supposed to be so clear and so unclouded, that the prisoner is quite adequate to make his own defence, and no counsel are allowed. Take it then upon that principle; and let the rule, and the reason of it, pass as sufficient. But if, instead of murdering the man, you have only libelled him, then, for some reason or another, though utterly unknown to us, the original imbecility of faculties in accused persons is respected, and counsel *are* allowed. Was ever such nonsense defended by public men in grave assemblies? The prosecutor, too (as Mr. Horace Twiss justly observes), can either allow or disallow counsel, by selecting his form of prosecution;—as where a mob had assembled to repeal, by riot and force, some unpopular statute, and certain persons had continued in that assembly for more than an hour after proclamation to disperse. That might be treated as levying war against the King, and then the prisoner would be entitled to receive (as Lord George Gordon did receive) the benefit of counsel. It might also be treated as a seditious riot; then it would be a misdemeanour, and counsel would still be allowed. But if Government had a mind to destroy the prisoner effectually, they have only to abstain from the charge of treason, and to introduce into the indictment the aggravation, that the prisoner had continued with the mob for an hour after proclamation to disperse; this is a felony, the prisoner's life is in jeopardy, and counsel are effectually excluded. It produces, in many other cases disconnected with

treason, the most scandalous injustice. A receiver of stolen goods, who employs a young girl to rob her master, may be tried for the misdemeanour; the young girl taken afterwards would be tried for the felony. The receiver would be punishable only with fine, imprisonment, or whipping, and he could have counsel to defend him. The girl indicted for felony, and liable to death, would enjoy no such advantage.

In the comparison between felony and treason, there are certainly some arguments why counsel should be allowed in felony rather than in treason. Persons accused of treason are generally persons of education and rank, accustomed to assemblies, and to public speaking, while men accused of felony are commonly of the lowest of the people. If it be true, that Judges, in cases of high treason, are more liable to be influenced by the Crown, and to lean against the prisoner, this cannot apply to cases of misdemeanour, or to the defendants in civil cases; but if it be necessary, that Judges should be watched in political cases, how often are cases of felony connected with political disaffection? Every Judge, too, has his idiosyncrasies, which require to be watched. Some hate Dissenters — some mobs; some have one weakness, some another; and the ultimate truth is, that no court of justice is safe, unless there is some one present whose occupation and interest it is to watch the safety of the prisoner. Till then, no man of right feeling can be easy at the administration of justice, and the punishment of death.

Two men are accused of one offence; the one dexterous, bold, subtile, gifted with speech, and remarkable for presence of mind; the other timid, hesitating, and confused — is there any reason why the chances of these two men for acquittal should be, as they are,

so very different? Inequalities there will be in the means of defence under the best system, but there is no occasion the law should make these greater than they are left by chance or nature.

But (it is asked) what practical injustice is done — what practical evil is there in the present system? The great object of all law is, that the guilty should be punished, and that the innocent should be acquitted. A very great majority of prisoners, we admit, are guilty — and so clearly guilty, that we believe they would be found guilty under any system; but among the number of those who are tried, *some* are innocent, and the chance of establishing their innocence is very much diminished by the privation of counsel. In the course of twenty or thirty years, among the whole mass of English prisoners, we believe *many* are found guilty who are innocent, and who would not have been found guilty, if an able and intelligent man had watched over their interest, and represented their case. If this happen only to two or three every year, it is quite a sufficient reason why the law should be altered. That such cases exist, we firmly believe; and this is the practical evil — perceptible to men of sense and reflection; but not likely to become the subject of general petition. To ask why there are not petitions — why the evil is not more noticed, is mere parliamentary froth and ministerial juggling. Gentlemen are rarely hung. If they were so, there would be petitions without end for counsel. The creatures exposed to the cruelties and injustice of the law are dumb creatures, who feel the evil without being able to express their feeling. Besides, the question is not, whether the evil is found out, but whether the evil exist. Whoever thinks it is an evil, should vote against it, whether the sufferer

from the injustice discovers it to be an injustice, or whether he suffer in ignorant silence. When the bill was enacted, which allowed counsel for treason, there was not a petition from one end of England to the other. Can there be a more shocking answer from the Ministerial Bench, than to say, for real evil we care nothing—only for detected evil? We will set about curing any wrong which affects our popularity and power: but as to any other evil, we wait till the people find it out; and, in the mean time, commit such evils to the care of Mr. George Lamb, and of Sir James Mackintosh. We are sure so good a man as Mr. Peel can never feel in this manner.

Howard devoted himself to his country. It was a noble example. Let two gentlemen on the Ministerial side of the House (we only ask for two) commit some crimes, which will render their execution a matter of painful necessity. Let them feel, and report to the House, all the injustice and inconvenience of having neither a copy of the indictment, nor a list of witnesses, nor counsel to defend them. We will venture to say, that the evidence of two such persons would do more for the improvement of the criminal law, than all the orations of Mr. Lamb, or the lucubrations of Beccaria. Such evidence would save time, and bring the question to an issue. It is a great duty, and ought to be fulfilled—and, in ancient Rome, would have been fulfilled.

The opponents always forget that Mr. Lamb's plan is not to *compel* prisoners to have counsel, but to *allow* them to have counsel, if they choose to do so. Depend upon it, as Dr. Johnson says, when a man is going to be hanged, his faculties are wonderfully concentrated. If it be really true, as the defenders of *Mumpsimus* observe, that the Judge is the best coun-

sel for the prisoner, the prisoner will soon learn to employ him, especially as his Lordship works without fees. All that we want is an option given to the prisoner — that a man, left to adopt his own means of defence in every trifling civil right, may have the same power of selecting his own auxiliaries for higher interests.

But nothing can be more unjust than to speak of Judges, as if they were of one standard, and one heart and head pattern. The great majority of Judges, we have no doubt, are upright and pure ; but some have been selected for flexible politics — some are passionate — some in a hurry — some are violent churchmen — some resemble ancient females — some have the gout — some are eighty years old — some are blind, deaf, and have lost the power of smelling. All one to the unhappy prisoner — he has no choice.

It is impossible to put so gross an insult upon Judges, Jurymen, Grand Jurymen, or any person connected with the administration of justice, as to suppose that the longer time to be taken up by the speeches of counsel constitutes the grand bar to the proposed alteration. If three hours would acquit a man, and he is hanged because he is only allowed two hours for his defence, the poor man is as much murdered as if his throat had been cut before he came into Court. If twelve Judges cannot do the most perfect justice, other twelve must be appointed. Strange administration of criminal law, to adhere obstinately to an inadequate number of Judges, and to refuse any improvement which is incompatible with this arbitrary and capricious enactment. Neither is it quite certain that the proposed alteration would create a greater demand upon the time of the Court. At present the counsel makes a defence by long cross-examinations,

and examinations in chief of the witnesses, and the Judge allows a greater latitude than he would do, if the counsel of the prisoner were permitted to speak. The counsel by these oblique methods, and by stating false points of law for the express purpose of introducing facts, endeavours to obviate the injustice of the law, and takes up more time by this oblique, than he would do by a direct defence. But the best answer to this objection of time (which, if true, is no objection at all) is, that as many misdemeanours as felonies are tried in a given time, though counsel are allowed in the former, and not in the latter case.

One excuse for the absence of counsel is, that the evidence upon which the prisoner is convicted is always so clear, that the counsel cannot gainsay it. This is mere absurdity. There is not, and cannot be, any such rule. Many a man has been hung upon a string of circumstantial evidence, which not only very ingenious men, but very candid and judicious men, might criticise and call in question. If no one were found guilty but upon such evidence as would not admit of a doubt, half the crimes in the world would be unpunished. This dictum, by which the present practice has often been defended, was adopted by Lord Chancellor Nottingham. To the lot of this Chancellor, however, it fell to pass sentence of death upon Lord Stafford, whom (as Mr. Denman justly observes) no court of justice, not even the House of Lords (constituted as it was in those days), could have put to death, if he had had counsel to defend him.

To improve the criminal law of England, and to make it really deserving of the incessant eulogium which is lavished upon it, we would assimilate trials for felony to trials for high treason. The prisoner should not

only have Counsel, but a copy of the indictment and a list of the witnesses, many days antecedent to the trial. It is in the highest degree unjust that I should not see and study the description of the crime with which I am charged, if the most scrupulous exactness be required in that instrument which charges me with crime. If the place *where*, the time *when*, and the manner *how*, and the persons by whom, must all be specified with the most perfect accuracy, if any deviation from this accuracy is fatal, the prisoner, or his legal advisers, should have a full opportunity of judging whether the scruples of the law have been attended to in the formation of the indictment; and they ought not to be confined to the hasty and imperfect consideration which can be given to an indictment exhibited for the first time in Court. Neither is it possible for the prisoner to repel accusation till he knows who is to be brought against him. He may see suddenly, stuck up in the witness's box, a man who has been writing him letters, to extort money from the threat of evidence he could produce. The character of such a witness would be destroyed in a moment, if the letters were produced; and the letters would have been produced, of course, if the prisoner had imagined such a person would have been brought forward by the prosecutor. It is utterly impossible for a prisoner to know in what way he may be assailed, and against what species of attacks he is to guard. Conversations may be brought against him which he has forgotten, and to which he could (upon notice) have given another colour and complexion. Actions are made to bear upon his case, which (if he had known they would have been referred to) might have been explained in the most satisfactory manner. All these modes of attack are pointed out by the list of

witnesses transmitted to the prisoner, and he has time to prepare his answer, as it is perfectly just he should have. This is justice, when a prisoner has ample means of compelling the attendance of his witnesses ; when his written accusation is put into his hand, and he has time to study it—when he knows in what manner his guilt is to be proved, and when he has a man of practised understanding to state his facts, and prefer his arguments. Then criminal justice may march on boldly. The Judge has no stain of blood on his ermine ; and the phrases which English people are so fond of lavishing upon the humanity of their laws, will have a real foundation. At present this part of the law is a mere relic of the barbarous injustice by which accusation in the early part of our jurisprudence was always confounded with guilt. The greater part of these abuses have been brushed away, as this cannot fail soon to be. In the mean time it is defended (as every other abuse has been defended), by men who think it their duty to defend every thing which *is*, and to dread every thing which *is not*. We are told that the Judge does what he does not do, and ought not to do. The most pernicious effects are anticipated in trials of felony, from that which is found to produce the most perfect justice in civil causes, and in cases of treason and misdemeanour : we are called upon to continue a practice without example in any other country, and are required by lawyers to consider that custom as humane, which every one who is not a lawyer pronounces to be most cruel and unjust—and which has not been brought forward to general notice, only because its bad effects are confined to the last and lowest of mankind.*

* All this nonsense is now put an end to. Counsel is allowed to the prisoner, and they are permitted to speak in his defence.

CATHOLICS. (E. REVIEW, 1827.)

1. *A Plain Statement in support of the Political Claims of the Roman Catholics; in a Letter to the Rev. Sir George Lee, Bart.* By Lord Nugent, Member of Parliament for Aylesbury. London, Hookham. 1826.
2. *A Letter to Viscount Milton, M. P.* By one of his Constituents. London, Ridgway. 1827.
3. *Charge by the Archbishop of Cashel.* Dublin, Milliken.

IF a poor man were to accept a guinea upon the condition that he spoke all the evil he could of another whom he believed to be innocent, and whose imprisonment he knew he should prolong, and whose privations he knew he should increase by his false testimony, would not the person so hired be one of the worst and basest of human beings? And would not his guilt be aggravated, if, up to the moment of receiving his *aceldama*, he had spoken in terms of high praise of the person whom he subsequently accused? Would not the latter feature of the case prove him to be as much without shame as the former evinced him to be without principle? Would the guilt be less, if the person so hired were a man of education? Would it be less, if he were above want? Would it be less, if the profession and occupation of his life were to decide men's rights, or to teach them morals and religion? Would it be less by the splendour of the bribe? Does a bribe of 3000*l.* leave a man innocent, whom a bribe of 30*l.* would cover with infamy? You are of a mature period of life, when

the opinions of an honest man ought to be, and are fixed. On Monday you were a barrister or a country clergyman, a serious and temperate friend to religious liberty and Catholic emancipation. In a few weeks from this time you are a bishop, or a dean, or a judge—publishing and speaking charges and sermons against the poor Catholics, and explaining away this sale of your soul by every species of falsehood, shabbiness, and equivocation. You may carry a bit of ermine on your shoulder, or hide the lower moiety of the body in a silken petticoat—and men may call you Mr. Dean, or My Lord; but you have sold your honour and your conscience for money; and, though better paid, you are as base as the witness who stands at the door of the judgment-hall, to swear whatever the suborner will put into his mouth, and to receive whatever he will put in his pocket.*

When soldiers exercise, there stands a goodly portly person out of the ranks, upon whom all eyes are directed, and whose signs and motions, in the performance of the manual exercise, all the soldiers follow. The Germans, we believe, call him a *Flugelman*. We propose Lord Nugent as a political flugelman;—he is always consistent, plain and honest, steadily and straightly pursuing his object without hope or fear, under the influence of good feelings and high principle. The House of Commons does not contain within its walls a more honest, upright man.

We seize upon the opportunity which this able

* It is very far from our intention to say that all who were for the Catholics, and are now against them, have made this change from base motives; it is equally far from our intention not to say that many men of both professions have subjected themselves to this shocking imputation.

pamphlet of his Lordship's affords us, to renew our attention to the Catholic question. There is little new to be said; but we must not be silent, or, in these days of baseness and tergiversation, we shall be supposed to have deserted our friend the Pope; and they will say of us, *Prostant venales apud Lambeth et Whitehall*. God forbid it should ever be said of us with justice—it is pleasant to loll and roll, and to accumulate—to be a purple and fine linen man, and to be called by some of those nicknames which frail and ephemeral beings are so fond of accumulating upon each other;—but the best thing of all is to live like honest men, and to add something to the cause of liberality, justice, and truth.

The Letter to Lord Milton is very well and very pleasantly written. We were delighted with the liberality and candour of the Archbishop of Cashel. The charge is in the highest degree creditable to him. He must lay his account for the furious hatred of bigots, and the incessant gnawing of rats.

There are many men who (thoroughly aware that the Catholic question must be ultimately carried) delay their acquiescence till the last moment, and wait till the moment of peril and civil war before they yield. That this moment is not quite so remote as was supposed a twelvemonth since, the events now passing in the world seem to afford the strongest proof. The truth is, that the disaffected state of Ireland is a standing premium for war with every cabinet in Europe which has the most distant intention of quarrelling with this country for any other cause. *'If we are to go to war, let us do so when the discontents of Ireland are at their greatest height, before any spirit of concession has been shown by the British*

Cabinet. Does any man imagine that so plain and obvious a principle has not been repeatedly urged on the French Cabinet?—that the eyes of the Americans are shut upon the state of Ireland—and that that great and ambitious Republic will not, in case of war, aim a deadly blow at this most sensitive part of the British empire? We should really say, that England has fully as much to fear from Irish fraternisation with America as with France. The language is the same; the Americans have preceded them in the struggle; the number of emigrant and rebel Irish is very great in America; and all parties are sure of perfect toleration under the protection of America. We are astonished at the madness and folly of Englishmen, who do not perceive that both France and America are only waiting for a convenient opportunity to go to war with this country; and that one of the first blows aimed at our independence would be the invasion of Ireland.

We should like to argue this matter with a regular Tory Lord, whose members vote steadily against the Catholic question. ‘I wonder that mere fear does not make you give up the Catholic question! Do you mean to put this fine place in danger—the venison—the pictures—the pheasants—the cellars—the hot-house and the grapery? Should you like to see six or seven thousand French or Americans landed in Ireland, and aided by a universal insurrection of the Catholics? Is it worth your while to run the risk of their success? What evil from the possible encroachment of Catholics, by civil exertions, can equal the danger of such a position as this? How can a man of your carriages, and horses, and hounds, think of putting your high fortune in such a predicament, and crying out, like a schoolboy or a

chaplain, "Oh, we shall beat them ! we shall put the rascals down !" No Popery, I admit to your Lordship, is a very convenient cry at an election, and has answered your end ; but do not push the matter too far : to bring on a civil war, for No Popery, is a very foolish proceeding in a man who has two courses, and a remove ! As you value your side-board of plate, your broad riband, your pier glasses—if obsequious domestics and large rooms are dear to you—if you love ease and flattery, titles and coats of arms—if the labour of the French cook, the dedication of the expecting poet, can move you—if you hope for a long life of side-dishes—if you are not insensible to the periodical arrival of the turtle fleets—emancipate the Catholics ! Do it for your ease, do it for your indolence, do it for your safety—emancipate and eat, emancipate and drink—emancipate, and preserve the rent-roll and the family estate !'

The most common excuse of the *Great Shabby* is, that the Catholics are their own enemies—that the violence of Mr. O'Connell and Mr. Shiel have ruined their cause—that, but for these boisterous courses, the question would have been carried before this time. The answer to this nonsense and baseness is, that the very reverse is the fact. The mild and the long-suffering may suffer for ever in this world. If the Catholics had stood with their hands before them simpering at the Earls of Liverpool and the Lords Bathurst of the moment, they would not have been emancipated till the year of our Lord four thousand. As long as the patient will suffer, the cruel will kick. No treason—no rebellion—but as much stubbornness and stoutness as the law permits—a thorough intimation that you know what is your due,

and that you are determined to have it if you can *lawfully* get it. This is the conduct we recommend to the Irish. If they go on withholding, and forbearing, and hesitating whether this is the time for the discussion or that is the time, they will be laughed at for another century as fools—and kicked for another century as slaves. ‘I must have my bill paid (says the sturdy and irritated tradesman); your master has put me off twenty times under different pretences. I know he is at home, and I will not quit the premises till I get the money.’ Many a tradesman gets paid in this manner, who would soon smirk and smile himself into the Gazette, if he trusted to the promises of the great.

Can any thing be so utterly childish and foolish as to talk of the bad taste of the Catholic leaders?—as if, in a question of conferring on, or withholding important civil rights from seven millions of human beings, any thing could arrest the attention of a wise man but the good or evil consequences of so great a measure. Suppose Mr. S. does smell slightly of tobacco—admit Mr. L. to be occasionally stimulated by rum and water—allow that Mr. F. was unfeeling in speaking of the Duke of York—what has all this nonsense to do with the extinction of religious hatred and the pacification of Ireland? Give it if it is right, refuse it if it is wrong. How it is asked, or how it is given or refused, are less than the dust of the balance.

What is the real reason why a good honest Tory, living at ease on his possessions, is an enemy to Catholic Emancipation? He admits the Catholic of his own rank to be a gentleman, and not a bad subject—and about theological disputes an excellent Tory never troubles his head. Of what importance is it

to him whether an Irish Catholic or an Irish Protestant is a judge in the King's Bench at Dublin? None; but *I am afraid for the Church of Ireland*, says our Alarmist. Why do you care so much for the Church of Ireland, a country you never live in?—*Answer—**I do not care so much for the Church of Ireland, if I was sure the Church of England would not be destroyed.*—And is it for the Church of England alone that you fear?—*Answer—**Not quite to that, but I am afraid we should all be lost, that every thing would be overturned, and that I should lose my rank and my estate.* Here then, we say, is a long series of dangers, which (if there were any chance of their ever taking place) would require half a century for their developement; and the danger of losing Ireland by insurrection and invasion, which may happen in six months, is utterly overlooked, and forgotten. And if a foreign influence should ever be fairly established in Ireland, how many hours would the Irish Church, how many months would the English Church, live after such an event? How much is any English title worth after such an event—any English family—any English estate? We are astonished that the brains of rich Englishmen do not fall down into their bellies in talking of the Catholic question—that they do not reason through the cardia and the pylorus—that all the organs of digestion do not become intellectual. The descendants of the proudest noblemen in England may become beggars in a foreign land from this disgraceful nonsense of the Catholic question—fit only for the ancient females of a market town.

What alarms us in the state of England is the uncertain basis on which its prosperity is placed—and

the prodigious mass of hatred which the English government continues, by its obstinate bigotry, to accumulate—eight hundred and forty millions sterling of debt. The revenue depending upon the demand for the shoes, stockings, and breeches of Europe—and seven millions of Catholics in a state of the greatest fury and exasperation. We persecute as if we did not *owe* a shilling—we spend as if we had no disaffection. This, by possibility, may go on; but it is dangerous walking—the chance is, there will be a fall. No wise man should take such a course. All probabilities are against it. We are astonished that Lord Hertford and Lord Lowther, shrewd and calculating Tories, do not see that it is nine to one against such a game.

It is not only the event of war we fear in the military struggle with Ireland; but the expense of war, and the expenses of the English government, are paving the way for future revolutions. The world never yet saw so extravagant a government as the Government of England. Not only is economy not practised—but it is despised; and the idea of it connected with disaffection, Jacobinism, and Joseph Hume. Every rock in the ocean where a cormorant can perch is occupied by our troops—has a governor, deputy-governor, store-keeper, and deputy-store-keeper—and will soon have an archdeacon and a bishop. Military colleges, with thirty-four professors, educating seventeen ensigns per annum, being half an ensign for each professor, with every species of nonsense, athletic, sartorial, and plumigerous. A just and necessary war costs this country about one hundred pounds a minute; whipcord fifteen thousand pounds; red tape seven thousand pounds; lace for drummers and fifers, nineteen thousand pounds; a pension to

one man who has broken his head at the Pole ; to another who has shattered his leg at the Equator ; subsidies to Persia ; secret service-money to Thibet ; an annuity to Lady Henry Somebody, and her seven daughters — the husband being shot at some place where we never ought to have had any soldiers at all ; and the elder brother returning four members to Parliament. Such a scene of extravagance, corruption, and expense as must paralyse the industry, and mar the fortunes, of the most industrious, spirited people that ever existed.

Few men consider the historical view which will be taken of present events. The bubbles of last year ; the fishing for half crowns in Vigo Bay ; the Milk Muffin and Crumpet Companies ; the Apple, Pear, and Plum Associations ; the National Gooseberry and Currant Company ; will all be remembered as instances of that partial madness to which society is occasionally exposed. What will be said of all the intolerable trash which is issued forth at public meetings of No Popery ? The follies of one century are scarcely credible in that which succeeds it. A grand-mamma of 1827 is as wise as a very wise man of 1727. If the world lasts till 1927, the grandmammams of that period will be far wiser than the tip-top No-Popery men of this day. That this childish nonsense will have got out of the drawing-room, there can be no doubt. It will most probably have past through the steward's room — and butler's pantry into the kitchen. This is the case with ghosts. They no longer loll on couches and sip tea ; but are down on their knees scrubbing with the scullion — or stand sweating, and basting with the cook. Mrs. Abigail turns up her nose at them, and the housekeeper de-

clares for flesh and blood, and will have none of their company.

It is delicious to the persecution-fanciers to reflect that no general bill has past in favour of the Protestant Dissenters. They are still disqualified from holding any office — and are only protected from prosecution by an annual indemnity act. So that the sword of Damocles still hangs over them — not suspended indeed by a thread, but by a cart-rope — still it hangs there an insult, if not an injury, and prevents the painful idea from presenting itself to the mind of perfect toleration, and pure justice. There is the larva of tyranny, and the skeleton of malice. Now this is all we presume to ask for the Catholics — admission to Parliament, exclusion from every possible office by law, and annual indemnity for the breach of law. This is surely much more agreeable to feebleness, to littleness, and to narrowness, than to say, the Catholics are as free, and as eligible, as ourselves.

The most intolerable circumstance of the Catholic dispute is, the conduct of the Dissenters. Any man may dissent from the Church of England, and preach against it, by paying sixpence. Almost every tradesman in a market town is a preacher. It must absolutely be ride and tie with them; the butcher must hear the baker in the morning, and the baker listen to the butcher in the afternoon, or there would be no congregation. We have often speculated upon the peculiar trade of the preacher from his style of action. Some have a tying-up or parcel-packing action; some strike strongly against the anvil of the pulpit; some screw, some bore, some act as if they were managing a needle. The occupation of the preceding week can seldom be mistaken. In the country, three or four thousand Ranters are sometimes encamped, sup-

plicating in religious platoons, or roaring psalms out of waggons. Now, all this freedom is very proper ; because, though it is abused, yet in truth there is no other principle in religious matters, than to let men alone as long as they keep the peace. Yet we should imagine this unbounded license of Dissenters should teach them a little charity towards the Catholics, and a little respect for their religious freedom. But the picture of sects is this — there are twenty fettered men in a jail, and every one is employed in loosening his own fetters with one hand, and rivetting those of his neighbour with the other.

“ “ If, then,” says a minister of our own Church, the Reverend John Fisher, rector of Wavenden, in this county, in a sermon published some years ago, and entitled “ The Utility of the Church Establishment, and its Safety consistent with Religious Freedom ” — “ If, then, the Protestant religion could have originally worked its way in this country against numbers, prejudices, bigotry, and interest ; if, in times of its infancy, the power of the prince could not prevail against it ; surely, when confirmed by age, and rooted in the affections of the people — when invested with authority, and in full enjoyment of wealth and power — when cherished by a Sovereign who holds his very throne by this sacred tenure, and whose conscientious attachment to it well warrants the title of Defender of the Faith — surely any attack upon it must be contemptible, any alarm of danger must be imaginary.” — *Lord Nugent's Letter*, p. 18.

To go into a committee upon the state of the Catholic Laws is to reconsider, as Lord Nugent justly observes, passages in our domestic history, which bear date about 270 years ago. Now, what human plan, device, or invention, 270 years old, does not require reconsideration ? If a man drest as he drest 270 years ago, the pug-dogs in the streets would tear

him to pieces. If he lived in the houses of 270 years ago, unrevised and uncorrected, he would die of rheumatism in a week. If he listened to the sermons of 270 years ago, he would perish with sadness and fatigue; and when a man cannot make a coat or a cheese, for 50 years together, without making them better, can it be said that laws made in those days of ignorance, and framed in the fury of religious hatred, need no revision, and are capable of no amendment?

We have not the smallest partiality for the Catholic religion; quite the contrary. That it should exist at all — that all Catholics are not converted to the Protestant religion — we consider to be a serious evil; but there they are, with their spirit as strong, and their opinions as decided, as your own; the Protestant part of the Cabinet have quite given up all idea of putting them to death; what remains to be done? We all admit the evil; the object is to make it as little as possible. One method commonly resorted to, we are sure, does not lessen, but increase the evil; and that is, to falsify history, and deny plain and obvious facts, to the injury of the Catholics. No true friend to the Protestant religion, and to the Church of England, will ever have recourse to such disingenuous arts as these.

‘ Our histories have not, I believe, stated what is untrue of Queen Mary, nor, perhaps, have they very much exaggerated what is true of her; but our arguers, whose only talk is of Smithfield, are generally very uncandid in what they conceal. It would appear to be little known, that the statutes which enabled Mary to burn those who had conformed to the Church of her father and brother, were Protestant statutes, declaring the common law against heresy, and framed by her father Henry the Eighth, and confirmed and acted upon by Order

of Council of her brother Edward the Sixth, enabling that mild and temperate young sovereign to burn divers misbelievers, by sentence of commissioners (little better, says Neale, than a Protestant Inquisition) appointed to "examine and search after all Anabaptists, Heretics, or contemners of the Book of Common Prayer." It would appear to be seldom considered, that her zeal might very possibly have been warmed by the circumstance of both her chaplains having been imprisoned for their religion, and herself arbitrarily detained, and her safety threatened, during the short but persecuting reign of her brother. The sad evidences of the violence of those days are by no means confined to her acts. The fagots of persecution were not kindled by Papists only, nor did they cease to blaze when the power of using them as instruments of conversion ceased to be in Popish hands. Cranmer himself, in his dreadful death, met with but equal measure for the flames to which he had doomed several who denied the *spiritual* supremacy of Henry the Eighth; to which he had doomed also a Dutch Arian, in Edward the Sixth's reign; and to which, with great pains and difficulty, he had persuaded that prince to doom another miserable enthusiast, Joan Bocher, for some metaphysical notions of her own on the divine incarnation. "So that on both sides" (says Lord Herbert of Cherbury) "it grew a bloody time." Calvin burned Servetus at Geneva, for "discoursing concerning the Trinity, contrary to the sense of the whole church; and thereupon set forth a book wherein he giveth an account of his doctrine, and of whatever else had passed in this affair, and teacheth that the sword may be lawfully employed against heretics." Yet Calvin was no Papist. John Knox extolled in his writings, as "the godly fact of James Melvil," the savage murder by which Cardinal Beaton was made to expiate his many and cruel persecutions; a murder to which, by the great popular eloquence of Knox, his fellow-labourers in the vineyard of reformation, Lesly and Melvil, had been excited; and yet John Knox, and Lesly, and Melvil, were no Papists. Henry the Eighth, whose one virtue was impartiality in these matters (if an impartial and evenly balanced persecution of all sects be a virtue), beheaded a chancellor and a bishop,

because, having admitted his civil supremacy, they doubted his spiritual. Of the latter of them Lord Herbert says, "The pope, who suspected not, perchance, that the bishop's end was so near, had, for more testimony of his favour to him as disaffection to our king, sent him a cardinal's hat; but unseasonably, his head being off." He beheaded the Countess of Salisbury, because at upwards of eighty years old she wrote a letter to Cardinal Pole, her own son; and he burned Barton, the "Holy Maid of Kent," for a prophecy of his death. He burned four Anabaptists in one day for opposing the doctrine of infant baptism; and he burned Lambert, and Anne Ascue, and Belerican, and Lassells, and Adams, on another day, for opposing that of transubstantiation; with many others of lesser note, who refused to subscribe to his Six Bloody Articles, as they were called, or whose opinions fell short of his, or exceeded them, or who abided by opinions after he had abandoned them; and all this after the Reformation. And yet Henry the Eighth was the sovereign who first delivered us from the yoke of Rome.

'In later times, thousands of Protestant Dissenters of the four great sects were made to languish in loathsome prisons, and hundreds to perish miserably, during the reign of Charles the Second, under a Protestant High Church Government, who then first applied, in the prayer for the Parliament, the epithets of "most religious and gracious," to a sovereign whom they knew to be profligate and unprincipled beyond example, and had reason to suspect to be a concealed Papist.

'Later still, Archbishop Sharpe was sacrificed by the murderous enthusiasm of certain Scotch Covenanters, who yet appear to have sincerely believed themselves inspired by Heaven to this act of cold-blooded barbarous assassination.

'On subjects like these, silence on all sides, and a mutual interchange of repentance, forgiveness, and oblivion, is wisdom. But to quote grievances on one side only, is not honesty.'—*Lord Nugent's Letter*, p. 24—27.

Sir Richard Birnie can only attend to the complaints of individuals; but no cases of swindling are

brought before him so atrocious as the violation of the Treaty of Limerick, and the disappointment of those hopes, and the frustration of that arrangement; which hopes, and which arrangements, were held out as one of the great arguments for the Union. The chapter of English Fraud comes next to the chapter of English Cruelty, in the history of Ireland — and both are equally disgraceful.

Nothing can be more striking than the conduct of the parent Legislature to the Legislature of the West Indian Islands. ‘We cannot leave you to yourselves upon these points’ (says the English Government); ‘the wealth of the planter, and the commercial prosperity of the islands, are not the only points to be looked to. We must look to the general rights of humanity, and see that they are not outraged in the case of the poor slave. It is impossible we can be satisfied, till we know that he is placed in a state of progress and amelioration.’ How beautiful is all this! and how wise, and how humane and affecting are our efforts throughout Europe to put an end to the Slave Trade! Wherever three or four negotiators are gathered together, a British diplomate appears among them, with some article of kindness and pity for the poor negro. All is mercy and compassion, except when wretched Ireland is concerned. The saint who swoons at the lashes of the Indian slave is the encourager of No-Popery Meetings, and the hard, bigotted, domineering tyrant of Ireland.

See the folly of delaying to settle a question, which, in the end, must be settled, and, ere long, to the advantage of the Catholics. How the price rises by delay! This argument is extremely well put by Lord Nugent.

‘I should observe that two occasions have already been lost

of granting these claims, coupled with what were called securities, such as never can return. In 1808, the late Duke of Norfolk and Lord Grenville, in the one House, and Mr. Ponsonby and Mr. Grattan, in the other, were authorised by the Irish Catholic body to propose a negative to be vested in the Crown upon the appointment of their bishops. Mr. Perceval, the Chancellor, and the Spiritual Bench, did not see the importance of this opportunity. It was rejected; the Irish were driven to despair; and in the same tomb with the question of 1808 lies for ever buried the Veto. The same was the fate with what were called the "wings" attached to Sir Francis Burdett's bill of last year. I voted for them, not for the sake certainly of extending the patronage of the crown over a new body of clergy, nor yet for the sake of diminishing the popular character of elections in Ireland, but because Mr. O'Connell, and because some of the Protestant friends of the measure who knew Ireland the best, recommended them; and because I believed, from the language of some who supported it only on these conditions, that they offered the fairest chance for the measure being carried. I voted for them as the price of Catholic emancipation, for which I can scarcely contemplate any Irish price that I would not pay. With the same object, I would vote for them again; but I shall never again have the opportunity. For these also, if they were thought of any value as securities, the events of this year in Ireland have shown you that you have lost for ever. And the necessity of the great measure becomes every day more urgent and unavoidable.'—*Lord Nugent's Letter*, p. 71, 72.

Can any man living say that Ireland is not in a much more dangerous state than it was, before the Catholic Convention began to exist? — that the inflammatory state of that country is not becoming worse and worse? — that those men whom we call demagogues and incendiaries have not produced a very considerable, and alarming effect upon the Irish population? Where is this to end? But the fool lifteth

up his voice in the coffee-house, and sayeth, ' We shall give them an hearty thrashing : let them rise — the sooner the better — we will soon put them down again.' The fool sayeth this in the coffee-house, and the greater fool praiseth him. But does Lord Stowell say this ? does Mr. Peel say this ? does the Marquis of Hertford say this ? do sensible, calm, and reflecting men like these, not admit the extreme danger of combatting against invasion and disaffection, and this with our forces spread in active hostility over the whole face of the globe ? Can they feel this vulgar, hectoring certainty of success, and stupidly imagine that a thing cannot be, because it has never yet been ? — because we have hitherto maintained our tyranny in Ireland against all Europe, that we are always to maintain it ? And then, what if the struggle does at last end in our favour ? Is the loss of English lives and of English money not to be taken into account ? Is this the way in which a nation overwhelmed with debt, and trembling whether its looms and ploughs will not be overmatched by the looms and ploughs of the rest of Europe ? Is this the way in which such a country is to husband its resources ? Is the best blood of the land to be flung away in a war of hassocks and surplices ? Are cities to be summoned for the Thirty-nine Articles, and men to be led on to the charge by professors of divinity ? The expense of *keeping* such a country must be added to all other enormous expenses. What is really possest of a country so subdued ? four or five yards round a sentry-box, and no more. And in twenty years' time it is all to do over again — another war — another rebellion, and another enormous and ruinously expensive contest, with the same dreadful uncertainty of the issue ! It is forgotten, too, that a

new feature has arisen in the history of this country. In all former insurrections in Ireland no democratic party existed in England. The efforts of Government were left free and unimpeded. But suppose a stoppage in your manufactures coincident with a rising of the Irish Catholics, when every soldier is employed in the sacred duty of Papist-hunting. Can any man contemplate such a state of things without horror? Can any man say that he is taken by surprise for such a combination? Can any man say that any danger to Church or State is comparable to this? But for the prompt interference of the military in the early part of 1826, three or four hundred thousand starving manufacturers would have carried ruin and destruction over the north of England, and over Scotland. These dangers are inseparable from an advanced state of manufactures — but they need not the addition of other and greater perils, which need not exist in any country, too wise and too enlightened for persecution.

Where is the weak point in these plain arguments? Is it the remoteness of the chance of foreign war? Alas! we have been at war 35 minutes out of every hour since the peace of Utrecht. The state of war seems more natural to man than the state of peace; and if we turn from general probabilities to the state of Europe — Greece to be liberated — Turkey to be destroyed — Portugal and Spain to be made free — the wounded vanity of the French, the increasing arrogance of the Americans, and our own philopole-mical folly, are endless scenes of war. We believe it is at all times a better speculation to make ploughshares into swords than swords into ploughshares. If war is certain, we believe insurrection to be quite as certain. We cannot believe but that the French or

the Americans would, in case of war, make a serious attempt upon Ireland, and that all Ireland would rush, tail foremost, into insurrection.

A new source of disquietude and war has lately risen in Ireland. Our saints or evangelical people, or serious people, or by whatever other name they are to be designated, have taken the field in Ireland against the Pope, and are converting in the large way. Three or four Irish Catholic prelates take a post-chaise, and curse the converters and the converted. A battle royal ensues with shillelas: the policeman comes in, and, reckless of Lambeth or the Vatican, makes no distinction between what is perpendicular, and what is hostile, but knocks down every body, and every thing which is upright; and so the feud ends for the day. We have no doubt but that these efforts will tend to bring things to a crisis much sooner between the parties, than the disgraceful conduct of the Cabinet alone would do.

‘It is a charge not imputed by the laws of England, nor by the oaths which exclude the Catholics: for those oaths impute only spiritual errors. But it is imputed, which is more to the purpose, by those persons who approve of the excluding oaths, and wish them retained. But, to the whole of this imputation, even if no other instance could be adduced, as far as a strong and remarkable example can prove the negative of an assumption which there is not a single example to support—the full, and sufficient, and incontestable answer is Canada. Canada, which, until you can destroy the memory of all that now remains to you of your sovereignty on the North American continent, is an answer practical, memorable, difficult to be accounted for, but blazing as the sun itself in sight of the whole world, to the whole charge of divided allegiance. At your conquest of Canada, you found it Roman Catholic; you had to choose for her a constitution in Church and State. You were wise enough

not to thwart public opinion. Your own conduct towards Presbyterianism in Scotland was an example for imitation; your own conduct towards Catholicism in Ireland was a beacon for avoidance; and in Canada you established and endowed the religion of the people. Canada was your only Roman Catholic colony. Your other colonies revolted; they called on a Catholic power to support them, and they achieved their independence. Catholic Canada, with what Lord Liverpool would call her half-allegiance, *alone* stood by you. She fought by your side against the interference of Catholic France. To reward and encourage her loyalty, you endowed in Canada bishops to say mass, and to ordain others to say mass, whom, at that very time, your laws would have hanged for saying mass in England; and Canada is still yours, in spite of Catholic France, in spite of her spiritual obedience to the pope, in spite of Lord Liverpool's argument, and in spite of the independence of all the states that surround her. This is the only trial you have made. Where you allow to the Roman Catholics their religion undisturbed, it has proved itself to be compatible with the most faithful allegiance. It is only where you have placed allegiance and religion before them as a dilemma, that they have preferred (as who will say they ought not?) their religion to their allegiance. How then stands the imputation? Disproved by history, disproved in all states where both religions co-exist, and in both hemispheres, and asserted in an exposition by Lord Liverpool, solemnly and repeatedly abjured by all Catholics, of the discipline of *their* church.'—*Lord Nugent's Letter*, p. 35, 36.

Can any man who has gained permission to take off his strait-waistcoat, and been out of Bedlam three weeks, believe that the Catholic question will be set to rest by the conversion of the Irish Catholics to the Protestant religion? The best chance of conversion will be gained by taking care that the point of honour is not against conversion.

'We may, I think, collect from what we know of the ordinary feelings of men, that, by admitting all to a community

of political benefits, we should remove a material impediment that now presents itself to the advances of proselytism to our established mode of worship; particularly assuming, as we do, that it is the purest, and that the disfranchised mode is supported only by superstition and priestcraft. By external pressure and restraint, things are compacted as well in the moral as in the physical world. Where a sect is at spiritual variance with the Established Church, it only requires an abridgement of civil privileges to render it at once a political faction. Its members become instantly pledged, some from enthusiasm, some from resentment, and many from honourable shame, to cleave with desperate fondness to the suffering fortunes of an hereditary religion. Is this human nature, or is it not? Is it a natural or an unnatural feeling for the representative of an ancient Roman Catholic family, even if in his heart he rejected the controverted tenets of his early faith, to scorn an open conformity to ours, so long as such conformity brings with it the irremovable suspicion that faith and conscience may have bowed to the base hope of temporal advantage? Every man must feel and act for himself: but, in my opinion, a good man might be put to difficulty to determine whether more harm is not done by the example of one changing his religion to his worldly advantage, than good by his openly professing conformity from what we think error to what we think truth.'—*Lord Nugent's Letter*, p. 54, 55.

'We will not be bullied out of the Catholic question.' This is a very common text, and requires some comment. If you mean that the sense of personal danger shall never prevent you from doing what you think right—this is a worthy and proper feeling, but no such motive is suspected, and no such question is at issue. Nobody doubts but that any English gentleman would be ready to join his No-Popery corps, and to do his duty to the community; if the Government required it; but the question is, Is it worth while in the Government to require it? Is it

for the general advantage that such a war should be carried on for such an object? It is a question not of personal valour, but of political expediency. Decide seriously if it is worth the price of civil war to exclude the Catholics, and act accordingly; taking it for granted that you possess, and that every body supposes you to possess, the vulgar attribute of personal courage; but do not draw your sword like a fool, from the unfounded apprehension of being called a coward.

We have great hopes of the Duke of Clarence. Whatever else he may be, he is not a bigot—not a person who thinks it necessary to show respect to his royal father, by prolonging the miseries and incapacities of six millions of people. If he ascends the throne of these realms, he must stand the fire of a few weeks' clamour and unpopularity. If the measure is passed by the end of May, we can promise his Royal Highness it will utterly be forgotten before the end of June. Of all human nonsense, it is surely the greatest to talk of respect to the late king—respect to the memory of the Duke of York—by not voting for the Catholic question. Bad enough to burn widows when the husband dies—bad enough to burn horses, dogs, butlers, footmen, and coachmen, on the funeral pile of a Scythian warrior—but to offer up the happiness of seven millions of people to the memory of the dead, is certainly the most insane sepulchral oblation of which history makes mention. The best compliment to these deceased princes, is to remember their real good qualities, and to forget (as soon as we can forget it) that these good qualities were tarnished by limited and mistaken views of religious liberty.

Persecuting gentlemen forget the expense of per-

secution ; whereas, of all luxuries, it is the most expensive. The Ranters do not cost us a farthing, because they are not disqualified by ranting. The Methodists and Unitarians are gratis. The Irish Catholics, supposing every alternate year to be war, as it has been for the last century, will cost us, within these next twenty years, forty millions of money. There are 20,000 soldiers there in time of peace ; in war, including the militia, their numbers will be doubled—and there must be a very formidable fleet in addition. Now, when the tax paper comes round, and we are to make a return of the greatest number of horses, buggys, poneys, dogs, cats, bull-finches, and canary birds, &c., and to be taxed accordingly, let us remember how well and wisely our money has been spent, and not repine that we have purchased, by severe taxation, the high and exalted pleasures of intolerance and persecution.

It is mere unsupported, and unsupportable nonsense, to talk of the exclusive disposition of the Catholics to persecute. The Protestants have murdered, and tortured, and laid waste as much as the Catholics. Each party, as it gained the upper hand, tried death as the remedy for heresy—both parties have tried it in vain.

A distinction is set up between civil rights, and political power, and applied against the Catholics : the real difference between these two words is, that civil comes from a Latin word, and political from a Greek one ; but if there is any difference in their meaning, the Catholics do not ask for political power, but for eligibility to political power. The Catholics have never prayed, or dreamt of praying, that so many of the Judges and King's Counsel should necessarily be Catholics ; but that no law should exist

which prevented them from becoming so, if a Protestant king chose to make them so. Eligibility to political power is a civil privilege, of which we have no more right to deprive any man than of any other civil privilege. The good of the State may require that all civil rights may be taken from Catholics ; but to say that eligibility to political power is not a civil right, and that to take it away without grave cause, would not be a gross act of injustice, is mere declamation. Besides, what is called political power, and what are called civil rights, are given, or withholden, without the least reference to any principle, but by mere caprice. A right of voting is given—this is political power ; eligibility to the office of Alderman or Bank Director is refused—this is a civil right : the distinction is perpetually violated, just as it has suited the state of parties for the moment. And here a word or two on the manner of handling the question. Because some offices might be filled with Catholics, all would be : this is one topic. A second is, because there might be inconvenience from a Catholic King or Chancellor, that, therefore, there would be inconvenience from Catholic Judges, or Sergeants. In talking of establishments, they always take care to blend the Irish and English establishments, and never to say which is meant—though the circumstances of both are as different as possible. It is always presumed, that sects holding opinions contrary to the establishment, are *hostile* to the establishment ; meaning by the word hostile, that they are combined, or ready to combine, for its destruction. It is contended that the Catholics would not be satisfied by these concessions ; meaning, thereby, that many would not be so—but forgetting to add, that many *would* be quite satisfied—all *more* satisfied, and

less likely to run into rebellion. It is urged that the mass of Catholics are indifferent to the question ; whereas (never mind the cause) there is not a Catholic plough-boy, at this moment, who is not ready to risk his life for it, nor a Protestant stable-boy, who does not give himself airs of superiority over any papistical cleaner of horses, who is scrubbing with him under the same roof.

The Irish were quiet under the severe code of Queen Anne — so the half-murdered man left on the ground bleeding by thieves is quiet ; and he only moans, and cries for help as he recovers. There was a method which would have made the Irish still more quiet, and effectually have put an end to all further solicitation respecting the Catholic question. It was adopted in the case of the wolves.

They are forming societies in Ireland for the encouragement of emigration, and striving, and successfully striving, to push their redundant population into Great Britain. Our business is to pacify Ireland — to give confidence to capitalists — and to keep their people where they are. On the day the Catholic question was past, all property in Ireland would rise 20 per cent.

Protestants admit that there are sectaries sitting in Parliament, who differ from the Church of England as much as the Catholics ; but it is forgotten that, according to the doctrine of the Church of England, the Unitarians are considered as condemned to eternal punishment in another world — and that many such have seats in Parliament. And can any thing be more preposterous (as far as doctrine has any influence in these matters) than that men, whom we believe to be singled out as objects of God's eternal vengeance, should have a seat in our national councils ; and that

Catholics, whom we believe may be saved, should not ?

The only argument which has any *appearance of weight*, is the question of divided allegiance ; and, generally speaking, we should say it is the argument which produces the greatest effect in the country at large. England, in this respect, is in the same state, at least, as the whole of Catholic Europe. Is not the allegiance of every French, every Spanish, and every Italian Catholic (who is not a Roman), divided ? His king is in Paris, or Madrid, or Naples, while his high-priest is at Rome. We speak of it as an anomaly in politics ; whereas, it is the state, and condition of almost the whole of Europe. The danger of this divided allegiance, they admit, is nothing, as long as it is confined to purely spiritual concerns ; but it may extend itself to temporal matters, and so endanger the safety of the State. This danger, however, is greater in a Catholic than in a Protestant country ; not only on account of the greater majority upon whom it might act ; but because there are objects in a Catholic country much more desirable, and attainable, than in a country like England, where Popery does not exist, or Ireland, where it is humbled, and impoverished. Take, for instance, the freedom of the Gallican church. What eternal disputes did this object give birth to ? What a temptation to the Pope to infringe in rich Catholic countries ! How is it possible his holiness can keep his hands from picking and stealing ? It must not be imagined that Catholicism has been any defence against the hostility and aggression of the Pope : he has cursed and excommunicated every Catholic State in Europe, in their turns. Let that eminent Protestant, Lord Bathurst, state any one instance where, for the last century, the

Pope has interfered with the temporal concerns of Great Britain. We can mention, and his Lordship will remember, innumerable instances where he might have done so, if such were the modern habit and policy of the Court of Rome. But the fact is, there is no Court of Rome, and no Pope. There is a wax-work Pope, and a wax-work Court of Rome. But Popes of flesh and blood have long since disappeared; and in the same way, those great giants of the city exist no more, but their truculent images are at Guildhall. We doubt if there is in the treasury of the Pope change for a guinea—we are sure there is not in his armoury one gun which will go off. We believe, if he attempted to bless any body whom Dr. Doyle cursed, or to curse any body whom Dr. Doyle blessed, that his blessings and curses would be as powerless as his artillery. Dr. Doyle* is the Pope of Ireland; and the ablest ecclesiastic of that country will always be its Pope—and that Lord Bathurst ought to know—most likely does know. But what a waste of life and time, to combat such arguments! Can my Lord Bathurst be ignorant? Can any man, who has the slightest knowledge of Ireland, be ignorant, that the portmanteau which sets out every quarter for Rome, and returns from it, is an heap of ecclesiastical matters, which have no more to do with the safety of the country, than they have to do with the safety of the moon—and which, but for the respect to individual feelings, might all be published at

* ‘Of this I can with great truth assure you; and my testimony, if not entitled to respect, should not be utterly disregarded, that Papal influence will never induce the Catholics of this country either to continue tranquil, or to be disturbed, either to aid or to oppose the Government; and that your Lordship can contribute much more than the Pope to secure their allegiance, or to render them disaffected.’—*Dr. Doyle's Letter to Lord Liverpool.* 115.

Charing Cross ? Mrs. *Flanagan*, intimidated by stomach complaints, wants a dispensation for eating flesh. *Cornelius Oh Bowel* has intermarried by accident with his grandmother ; and, finding that she is really his grandmother, his conscience is uneasy. *Mr. MacTooley*, the priest, is discovered to be married ; and to have two sons, *Castor* and *Pollux MacTooley*. Three or four schools-full of little boys have been cursed for going to hear a Methodist preacher. Bargains for shirts and toe-nails of deceased saints—surplices and trencher-caps blessed by the Pope. These are the fruits of double allegiance—the objects of our incredible fear, and the cause of our incredible folly. There is not a syllable which goes to or comes from the Court of Rome, which, by a judicious expenditure of sixpence by the year, would not be open to the examination of every Member of the Cabinet. Those who use such arguments know the answer to them as well as we do. The real evil they dread is the destruction of the Church of Ireland, and, through that, of the Church of England. To which we reply, that such danger must proceed from the regular proceedings of Parliament, or be effected by insurrection and rebellion. The Catholics, restored to civil functions, would, we believe, be more likely to cling to the Church than to Dissenters. If not, both Catholics and Dissenters must be utterly powerless against the overwhelming English interests, and feelings in the House. Men are less inclined to run into rebellion, in proportion as they have less to complain of ; and, of all other dangers, the greatest to the Irish and English Church establishments, and to the Protestant faith throughout Europe, is *to leave Ireland in its present state of discontent.*

If the intention is to wait to the last, before concession is made, till the French or Americans have landed, and the Holy standard has been unfurled, we ought to be sure of the terms which can be obtained at such a crisis. This game was played in America. Commissioners were sent in one year to offer and to press what would have been most thankfully received the year before ; but they were always too late. The rapid concessions of England were outstripped by the more rapid exactions of the colonies ; and the commissioners returned with the melancholy history, that they had humbled themselves before the rebels in vain. If you ever mean to concede at all, do it when every concession will be received as a favour. To wait till you are forced to treat, is as mean in principle as it is dangerous in effect.

Then, how many thousand Protestant Dissenters are there who pay a double allegiance to the King, and to the head of their Church, who is not the King ? Is not Mr. William Smith, member for Norwich, the head of the Unitarian Church ? Is not Mr. Wilberforce the head of the Clapham Church ? Are there not twenty preachers at Leeds, who regulate all the proceedings of the Methodists ? The gentlemen we have mentioned are eminent, and most excellent men ; but if any thing at all is to be apprehended from this divided allegiance, we should be infinitely more afraid of some Jacobinical fanatic at the head of Protestant votaries — some man of such character as Lord George Gordon — than we should of all the efforts of the Pope.

As so much evil is supposed to proceed from not obeying the King as head of the Church, it might be supposed to be a very active office — that the King was perpetually interfering with the affairs of the

Church — and that orders were in a course of emanation from the Throne which regulated the fervour, and arranged the devotion of all the members of the Church of England. But we really do not know what orders are ever given by the King to the Church, except the appointment of a fast-day once in three or four years ; — nor can we conceive (for appointment to Bishoprics is out of the question) what duties there would be to perform, if this allegiance were paid, instead of being withholden. Supremacy appears to us to be a mere name, without exercise of power — and allegiance to be a duty, without any performance annexed. If any one will say what ought to be done which is not done, on account of this divided allegiance, we shall better understand the magnitude of the evil. Till then, we shall consider it as a lucky Protestant phrase, good to look at, like the mottos and ornaments on cake, but not fit to be eaten.

Nothing can be more unfair than to expect, in an ancient church like that of the Catholics, the same uniformity as in churches which have not existed for more than two or three centuries. The coats and waistcoats of the reign of Henry VIII. bear some resemblance to the same garments of the present day ; but, as you recede, you get to the skins of wild beasts, or the fleeces of sheep, for the garments of savages. In the same way, it is extremely difficult for a church, which has to do with the counsels of barbarous ages, not to be detected in some discrepancy of opinion ; while in younger churches, every thing is fair and fresh, and of modern date and figure ; and it is not the custom among Theologians to own their church in the wrong. ‘No religion can stand, if men, without regard to their God, and with regard

only to controversy, shall rake out of the rubbish of antiquity the obsolete and quaint follies of the sectarians, and affront the majesty of the Almighty with the impudent catalogue of their devices ; and it is a strong argument against the proscriptive system, that it helps to continue this shocking contest. Theologian against theologian, polemic against polemic, until the two madmen defame their common parent, and expose their common religion.' — *Grattan's Speech on the Catholic Question*, 1805.

A good-natured and well-conditioned person has pleasure in keeping and distributing any thing that is good. If he detects any thing with superior flavour, he presses and invites, and is not easy till others participate ; — and so it is with political and religious freedom. It is a pleasure to possess it, and a pleasure to communicate it to others. There is something shocking in the greedy, growling, guzzling monopoly of such a blessing.

France is no longer a nation of atheists ; and therefore, a great cause of offence to the Irish Roman Catholic Clergy is removed. Navigation by steam renders all shores more accessible. The union among Catholics is consolidated ; all the dangers of Ireland are redoubled ; every thing seems tending to an event fatal to England — fatal (whatever Catholics may foolishly imagine) to Ireland — and which will subject them both to the dominion of France.

Formerly a poor man might be removed from a parish if there was the slightest danger of his becoming chargeable ; a hole in his coat or breeches excited suspicion. The churchwardens said, ' He *has* cost us nothing, but he *may* cost us something ; and we must not live even in the apprehension of evil.' All this is changed ; and the law now says, ' Wait till you

are hurt ; time enough to meet the evil when it comes ; you have no right to do a certain evil to others, to prevent an uncertain evil to yourselves.' The Catholics, however, are told that what they *do* ask is objected to, from the fear of what they *may* ask ; that they must do without that which is *reasonable*, for fear they should ask what is *unreasonable*. 'I would give you a penny (says the miser to the beggar), if I was quite sure you would not ask me for half a crown.'

'Nothing, I am told, is now so common on the Continent as to hear our Irish policy discussed. Till of late the extent of the disabilities was but little understood, and less regarded, partly because, having less liberty themselves, foreigners could not appreciate the deprivations, and partly because the pre-eminence of England was not so decided as to draw the eyes of the world on all parts of our system. It was scarcely credited that England, that knight-errant abroad, should play the exclusionist at home ; that every where else she should declaim against oppression, but contemplate it without emotion at her doors. That her armies should march, and her orators philippise, and her poets sing against continental tyranny, and yet that laws should remain extant, and principles be operative within our gates, which are a bitter satire on our philanthropy, and a melancholy negation of our professions. Our sentiments have been so lofty, our deportment to foreigners so haughty, we have set up such liberty and such morals, that no one could suppose that we were hypocrites. Still less could it be foreseen that a great moralist, called Joseph Surface, kept a "Little Milliner" behind the scenes, we too should be found out at length in taking the diversion of private tyranny after the most approved models for that amusement.'—*Letter to Lord Milton*, p. 50, 51.

We sincerely hope — we firmly believe — it never will happen ; but if it were to happen, why cannot England be just as happy with Ireland being Catholic,

as it is with Scotland being Presbyterian? Has not the Church of England lived side by side with the Kirk, without crossing or jostling, for these last hundred years? Have the Presbyterian members entered into any conspiracy for mincing Bishoprics and Deaneries into Synods and Presbyteries? And is not the Church of England tenfold more rich and more strong than when the separation took place? But however this may be, the real danger, even to the Church of Ireland, as we have before often remarked, is the refusal of Catholic Emancipation.

It would seem, from the frenzy of many worthy Protestants, whenever the name of Catholic is mentioned, that the greatest possible diversity of religious opinions existed between the Catholic and the Protestant — that they were as different as fish and flesh — as alkali and acid — as cow and carthorse; whereas it is quite clear, that there are many Protestant sects whose difference from each other is much more marked, both in church discipline and in tenets of faith, than that of Protestants and Catholics. We maintain that Lambeth, in these two points, is quite as near to the Vatican as it is to the Kirk — if not much nearer.

Instead of lamenting the power of the priests over the lower orders of the Irish, we ought to congratulate ourselves that any influence can affect or control them. Is the tiger less formidable in the forest than when he has been caught and taught to obey a voice, and tremble at an hand? But we over-rate the power of the priests, if we suppose that the upper orders are to encounter all the dangers of treason and rebellion, to confer the revenues of the Protestant Church upon their Catholic clergy. If the influence of the Catholic clergy upon men of rank and education is so un-

bounded, why cannot the French and Italian clergy recover their possessions, or acquire an equivalent for them? They are starving in the full enjoyment of an influence which places (as we think) all the wealth and power of the country at their feet — an influence which, in our opinion, overpowers avarice, fear, ambition, and is the master of every passion which brings on change and movement in the Protestant world.

We conclude with a few words of advice to the different opponents of the Catholic question.

To the No-Popery Fool.

You are made use of by men who laugh at you, and despise you for your folly and ignorance; and who, the moment it suits their purpose, will consent to emancipation of the Catholics, and leave you to roar and bellow No Popery! to Vacancy and the Moon.

To the No-Popery Rogue.

A shameful and scandalous game, to sport with the serious interests of the country, in order to gain some increase of public power!

To the Honest No-Popery People.

We respect you very sincerely — but are astonished at your existence.

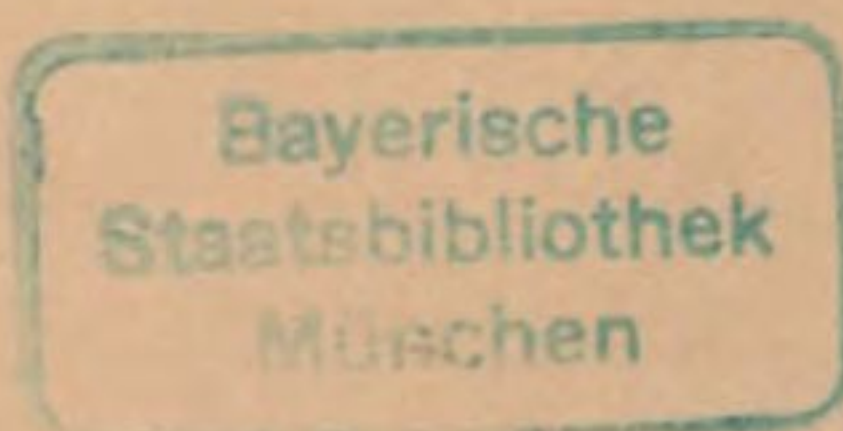
To the Base.

Sweet children of turpitude, beware! the old anti-popery people are fast perishing away. Take heed that you are not surprised by an emancipating king, or an emancipating administration. Leave a *locus pœnitentiæ*! — prepare a place for retreat — get ready your equivocations and denials. The dreadful day may yet come, when liberality may lead to place and

power. We understand these matters here. It is safest to be moderately base — to be flexible in shame, and to be always ready for what is generous, good, and just, when any thing is to be gained by virtue.

To the Catholics.

Wait. Do not add to your miseries by a mad and desperate rebellion. Persevere in civil exertions, and concede all you can concede. All great alterations in human affairs are produced by compromise.



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END OF THE SECOND VOLUME.

It is - We understand these matters here - to be moderately base - to be flexible in aims, and to be always ready for what is generous, good, and just, when any thing is to be gained by virtue.

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END OF THE SECOND VOLUME.

To the Hon. Mr. P. J. P. P.

We respect you very sincerely - and are anxious to hear of your success.

To the Hon.

8/12/18



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